2009-2010

HOUSE COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP

MINUTES

2009

COMMITTEE ON HOUSE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP

BOOK #1

HOUSE COMMITTEE ON COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP
2009-2010

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
DICKSON, Margaret Chair	Brenda Lee Committee Assistant	733-5776	2217	42
ADAMS, Alma Vice-Chair	Sandra Brown	733-5902	304	67
CARNEY, Becky Vice-Chair	Tazra Mitchell	733-5827	1221	54
GOFORTH, Bruce Vice-Chair	Ann Jordan	733-5746	1220	21
STARNES, Edgar Vice-Chair	Pattie Fleming	733-5931	602	14
STEWART, Randy Vice-Chair	Ruth Fish	733-5802	1219	95
WILKINS, W.A. "Winkie" Vice-Chair	Nancy Brantley	715-0850	1301	71
ALLEN, Lucy	Shara Graham	733-5860	419B	41
ALLRED, Cary	Joanna Hogg	733-5905	503	38
AVILA, Marilyn	Susan Lewis	733-5530	1017	112
BLACKWELL, Hugh	Joan Adams	733-5805	606	114
BLACKWOOD, Curtis	Mizie Finke	733-2406	1317	97
BOLES, Jamie	Rhonda Todd	733-5903	501	105
BRAXTON, Van	Ada Finch	715-3017	2219	46
BROWN, Larry	Delores Ledford	733-5607	609	73
COLE, Nelson	Linda Laton	733-5779	1218	45
ENGLAND, Bob	Lisa Brown	733-5749	303	5

FARMER-BUTTERFIELD, Jean	**Ruth Merkle**	**733-5898**	**528**	**53**
FLOYD, Elmer	**Jackie Dickens**	**733-5959**	**1311**	**90**
FRYE, Phillip	**Mary Hayes**	**733-5661**	**1019**	**62**
GILLESPIE, Mitch	**Cindy Hobbs**	**733-5862**	**1008**	**74**
HARRELL, Ty	**Lara Swanson**	**733-5602**	**2121**	**108**
HOLLOWAY, Bryan	**Lindsay McCargo**	**733-5609**	**502**	**98**
McGEE, William "Bill"	**Jayne Nelson**	**733-5747**	**531**	**26**
MILLS, Grey	**Wanda Benson**	**733-5741**	**1111**	**117**
OWENS, Bill	**Linda Johnson**	**733-0010**	**635**	**9**
PIERCE, Garland	**Mildred Alston**	**733-5803**	**301**	**7**
RAPP, Ray	**Forrest Gilliam**	**733-5732**	**2213**	**17**
SAMUELSON, Ruth	**Susan Phillips**	**715-3009**	**418B**	**102**
STEEN, Fred	**Chris Floyd**	**733-5881**	**514**	**37**
TARLETON, Cullie	**Susan Whitehead**	**733-7727**	**2221**	**69**
WARREN, Edith	**Martha Hoover**	**715-3023**	**416A**	**35**
WRAY, Michael	**Mary Capps**	**733-5662**	**405**	**60**

NORTH CAROLINA GENERAL ASSEMBLY

House Commerce, Small Business, and Entrepreneurship Committee
2009-2010 SESSION

Rep. Margaret H. Dickson
Chair

Rep. Alma Adams
Vice-Chair

Rep. Becky Carney
Vice-Chair

Rep. Bruce Goforth
Vice-Chair

Rep. Edgar Starnes
Vice-Chair

Rep. Randy Stewart
Vice-Chair

Rep. W. A. "Winkie" Wilkins
Vice-Chair

Rep. Lucy Allen

Rep. Cary Allred

Rep. Marilyn Avila

Rep. Hugh Blackwell

Rep. Curtis Blackwood

Rep. Jamie Boles

Rep. Van Braxton

Rep. Larry Brown

Rep. Nelson Cole

Rep. Bob England

Rep. Jean Farmer-Butterfield

Rep. Elmer Floyd

Rep. Phillip Frye

Rep. Mitch Gillespie

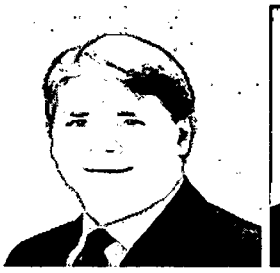
Rep. Ty Harrell

NORTH CAROLINA GENERAL ASSEMBLY

House Commerce, Small Business, and Entrepreneurship Committee
2009-2010 SESSION

Rep. Bryan Holloway

Rep. William "Bill" McGee



Rep. Grey Mills

Rep. Bill Owens

Rep. Garland Pierce

Rep. Ray Rapp

Rep. Ruth Samuelson

Rep. Fred Steen

Rep. Cullie Tarleton

Rep. Edith Warren

Rep. Michael Wray

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

February 27, 2009

The Honorable Margaret Highsmith Dickson, Chair
Committee on Commerce, Small Business
& Entrepreneurship
North Carolina House of Representatives
16 West Jones Street, Room 1219
Raleigh, NC 27601-1096

Dear Representative Dickson:

I have asked Ms. Karen Cochrane-Brown to serve as the coordinating staff person (point person) for the committee staff's efforts for the Committee on Commerce, Small Business & Entrepreneurship. I would ask that you and your committee clerk consider Ms. Cochrane-Brown as your initial contact for staffing needs and questions for the committee.

The role of the coordinating staff will be to serve as the primary contact for the committee chairs and committee clerks to use in arranging committee meetings and identifying bills to be considered. Coordinating staff also will coordinate the assignment of bills among the committee staff. Most of the members of the Research Division have been asked to assume this role for one or more committees this session.

If you are unable to reach Ms. Cochrane-Brown at anytime, you should feel free to contact any other committee staff member for assistance.

Please let me know if you have any questions. It is my hope that this process will make for better service for you and the committee.

Yours truly,

O. Walker Reagan

O. Walker Reagan
Director of Research

OWR/lba

cc: Hon. Joe Hackney, Speaker
Mr. George Hall
Ms. Karen Cochrane-Brown
Ms. Drupti Chauhan
Mr. Brad Krehely
Mr. Brian Peck
Ms. Christy Henson

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Brenda Lee (Rep. Dickson)

From: Lucy Anders (Research)
ent: Friday, February 27, 2009 3:04 PM
o: Rep. Margaret H. Dickson
Cc: Rep. Joe Hackney (Speaker); Allen Rogers (Speaker Hackney's Office); George Hall (Legislative Services Officer); Walker Reagan (Research, Director); Karen Cochrane-Brown (Research); Drupti Chauhan (Research); Brad Krehely (Research); Brian Peck (Research/Library); Christy Henson (Research/Library)
Subject: Committee on Commerce, Small Business & Entrepreneurship - Coordinating Staff

Attachments: Rep. Dickson ltr2.doc

Following is a letter appointing coordinating staff to the above committee.

Rep. Dickson ltr2.doc (305 KB)...

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

Kory Goldsmith
Interim Director

February 13, 2009

The Honorable Margaret Highsmith Dickson, Chair
Committee on Commerce, Small Business
& Entrepreneurship
North Carolina House of Representatives
16 West Jones Street, Room 1219
Raleigh, NC 27601-1096

Dear Representative Dickson:

I have asked Ms. Karen Cochrane-Brown, Ms. Drupti Chauhan, and Mr. Brad Krehely with the Research Division, to serve as staff/counsel to the Committee on Commerce, Small Business & Entrepreneurship, which you chair. They will attend the meetings of the Committee when it convenes on Wednesdays at 1:00 p.m. In accordance with the Committee's directions as expressed through the Chair, they will aid in analyzing proposed legislation and drafting amendments and committee substitutes. They will staff several other committees, as well.

My best wishes to you and the Committee in its work. If I can be of any service to you or the Committee, please contact me.

Yours truly,

Kory J. Goldsmith
Interim Director of Research

KJG/lba

cc: Hon. Joe Hackney, Speaker
Mr. George Hall
Mr. Walker Reagan
Ms. Karen Cochrane-Brown
Ms. Drupti Chauhan
Mr. Brad Krehely
Mr. Brian Peck
Ms. Christy Henson

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Commerce, Small Business, and Entrepreneurship

House Standing Committee

Details

- Meets Wednesdays at 1:00 pm in 1228 LB
- Meeting notices via email

Members

Chairman	Rep. Dickson
Vice Chairman	Rep. Adams
Vice Chairman	Rep. Carney
Vice Chairman	Rep. Goforth
Vice Chairman	Rep. Starnes
Vice Chairman	Rep. Stewart
Vice Chairman	Rep. Wilkins
Members	Rep. Allen, Rep. Allred, Rep. Avila, Rep. Blackwell, Rep. Blackwood, Rep. Boles, Rep. Braxton, Rep. Brown, Rep. Cole, Rep. England, Rep. Farmer-Butterfield, Rep. E. Floyd, Rep. Frye, Rep. Gillespie, Rep. Harrell, Rep. Holloway, Rep. McGee, Rep. Mills, Rep. Owens, Rep. Pierce, Rep. Rapp, Rep. Samuelson, Rep. Steen, Rep. Tarleton, Rep. E. Warren, Rep. Wray

ATTENDANCE

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP

2009-2010

(Name of Committee)

DATES	03-04-09	03-11-09	03-18-09	03-25-09	04-01-09	04-08-09	04-22-09	04-29-09	05-05-09	5-6-09 1pm	5-6-09 6pm	05-11-09	05-12-09	05-13-09	05-27-09
DICKSON, Margaret, Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ADAMS, Alma, Vice-Chair		X					X		X				X		
CARNEY, Becky, Vice-Chair	X	X	X	X	X										
GOFORTH, Bruce, Vice-Chair	X	X	X	X	X	X	X	X	X			X			X
STARNES, Edgar, Vice-Chair	X	X		X				X	X	X	X			X	X
STEWART, Randy, Vice-Chair	X	X	X	X	X		X	X	X	X	X				X
WILKINS, Winkie, Vice-Chair	X	X	X				X	X	X	X		X		X	X
ALLEN, Lucy	X		X				X	X		X		X			X
ALLRED, Cary	X	X	X	X	X		X	X	X	X	X				
AVILA, Marilyn	X	X	X	X	X	X	X	X	X			X			X
BLACKWELL, Hugh	X	X	X	X	X	X	X	X	X	X	X	X		X	X
BLACKWOOD, Curtis	X	X	X	X	X	X			X	X	X	X		X	X
BOLES, Jamie	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
BRAXTON, Van		X	X	X	X		X	X	X	X	X	X			X
BROWN, Larry	X	X	X		X		X		X	X		X	X	X	
COLE, Nelson	X	X	X	X	X	X	X	X	X	X	X	X	X		
ENGLAND, Bob	X	X			X				X	X		X			X
FARMER-BUTTERFIELD, Jean	X	X	X	X	X			X	X	X			X		X
FLOYD, Elmer	X	X	X	X	X	X	X	X	X	X	X	X			X
FRYE, Phillip	X	X	X	X	X	X	X	X	X	X		X		X	X
GILLESPIE, Mitch			X					X				X		X	X
HARRELL, Ty	X	X	X	X	X	X	X	X	X	X		X			X
HOLLOWAY, Bryan		X	X	X	X				X						X
McGEE, William "Bill"	X	X	X	X	X	X		X	X	X	X	X	X	X	X

ATTENDANCE

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP

2009-2010

(Name of Committee)

DATES	03-04-09	03-11-09	03-18-09	03-25-09	04-01-09	04-08-09	04-22-09	04-29-09	05-05-09	5-6-09 1pm	5-6-09 6pm	05-11-09	05-12-09	05-13-09	05-27-09
MILLS, Grey	X	X	X	X	X		X	X	X	X	X	X	X	X	
OWENS, Bill	X						X	X	X			X			
PIERCE, Garland	X	X		X			X		X	X		X	X		
RAPP, Ray	X	X	X	X	X		X		X			X			X
SAMUELSON, Ruth	X	X	X		X	X	X	X	X	X	X	X		X	X
STEEN, Fred	X	X	X	X				X	X	X		X	X		X
TARLETON, Cullie	X	X	X	X	X	X	X	X		X	X	X		X	X
WARREN, Edith	X	X		X						X	X				X
WRAY, Michael	X	X		X		X		X	X	X			X		
STAFF:															
COCHRANE-BROWN, Karen	X	X	X	X	X	X	X	X		X	X	X			X
CHAUHAN, Drupti	X	X	X	X	X	X	X	X	X	X	X	X		X	X
KREHELY, Brad	X	X	X	X	X	X	X	X	X	X	X	X		X	X
REAGAN, Walker													X		
HUNTLEY, Denise													X		
HUDSON, Jeff														X	

ATTENDANCE

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP

2009-2010

(Name of Committee)

DATES	06-03-09	06-10-09	06-17-09	06-24-09	07-01-09	07-08-09	07-15-09	07-22-09	07-29-09	08-05-09	08-06-09				
DICKSON, Margaret, Chair	X	X	X	X	X	X	X	X	X	X	X				
ADAMS, Alma, Vice-Chair		X					X	X			X				
CARNEY, Becky, Vice-Chair						X	X	X	X	X	X				
GOFORTH, Bruce, Vice-Chair	X	X	X	X	X	X	X	X	X						
STARNES, Edgar, Vice-Chair	X		X	X	X	X	X	X	X	X	X				
STEWART, Randy, Vice-Chair	X	X	X		X	X	X	X	X		X				
WILKINS, Winkie, Vice-Chair		X	X	X	X	X	X	X	X	X	X				
ALLEN, Lucy		X	X		X	X	X	X			X				
AVILA, Marilyn	X	X	X	X	X	X	X	X	X	X	X				
BLACKWELL, Hugh	X	X	X	X	X	X	X	X	X	X					
BLACKWOOD, Curtis	X	X	X	X	X	X	X	X	X	X					
BOLES, Jamie	X	X	X	X	X	X	X	X	X	X	X				
BRAXTON, Van	X		X	X	X	X	X	X	X	X	X				
BROWN, Larry	X	X	X	X	X	X	X	X	X		X				
COLE, Nelson	X	X	X		X	X	X	X	X	X	X				
ENGLAND, Bob			X		X			X	X	X	X				
FARMER-BUTTERFIELD, Jean	X		X		X	X	X	X			X				
FLOYD, Elmer	X	X	X	X	X	X	X	X	X	X	X				
FRYE, Phillip	X	X		X	X	X	X	X	X	X	X				
GILLESPIE, Mitch					X	X	X	X			X				
HARRELL, Ty	X	X	X	X		X	X	X		X	X				
HOLLOWAY, Bryan	X		X	X	X	X	X	X	X	X	X				
McGEE, William "Bill"	X	X		X	X	X	X	X	X	X	X				

ATTENDANCE

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP

2009-2010

(Name of Committee)

DATES	06-03-09	06-10-09	06-17-09	06-24-09	07-01-09	07-08-09	07-15-09	07-22-09	07-29-09	08-05-09	08-06-09				
MILLS, Grey	X	X	X	X	X	X	X	X	X	X	X				
OWENS, Bill			X				X				X				
PIERCE, Garland	X	X	X	X	X	X	X	X		X	X				
RAPP, Ray					X	X	X	X	X	X	X				
SAMUELSON, Ruth	X	X	X	X	X	X	X	X	X		X				
STEEN, Fred	X			X	X	X	X				X				
TARLETON, Cullie	X	X	X	X		X	X		X	X	X				
WARREN, Edith	X		X		X	X		X	X	X					
WRAY, Michael	X	X	X	X	X	X	X				X				
STAFF:															
COCHRANE-BROWN, Karen	X	X	X	X	X	X	X		X	X	X				
CHAUHAN, Drupti	X	X	X	X	X	X	X	X	X	X	X				
KREHELY, Brad	X	X	X	X	X	X	X	X	X	X	X				
Walston, Martha								X							

Brenda Lee (Rep. Dickson)

rom: Sandra Brown (Rep. Adams)
ent: Tuesday, June 02, 2009 1:15 PM
o: Rep. Margaret H. Dickson; Rep. Becky Carney; Rep. D. Bruce Goforth; Rep. Edgar Starnes; Rep. Randy Stewart; Rep. Winkie Wilkins
Cc: Rep. Alma Adams
Subject: Commerce, Small Business & Entrepreneurship Committee

To all committee Chairs:

Rep. Adams wants you all to know that she will have to (for the moment) miss the remainder of the Commerce, Small Business & Entrepreneurship committee meetings due to Appropriations. If she is able to attend in the future, she will attend.

Thanks

Sandra E. Brown
Administrative Assistant to
Representative Alma S. Adams - Dist. 58
919-733-5902
adamsla@ncleg.net

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, March 4, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: **Secretary of Commerce** J. Keith Crisco will be the guest speaker.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 5	Continuing Crossbow Permit/Dealers & Manufac.	Senator Stevens

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:55 p.m. on **March 02, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, March 4, 2009
1:00 P. M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

Introduction of Guest Speaker
J. Keith Crisco, Secretary of Commerce
North Carolina Department of Commerce — **Representative Dickson**

AGENDA ITEMS

Senate Bill 5*	**Continuing Crossbow Permit/Dealers & Manufac.**
Sponsor:	**Senator Stevens**

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, March 4, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, March 4, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair, Representatives Carney, Goforth, Starnes, Stewart, Wilkins, Vice Chairs; Representatives Allen, Allred, Avila, Blackwell, Blackwood, Boles, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Harrell, McGee, Mills, Owens, Pierce, Rapp, Samuelson, Steen, Tarleton, Warren, and Wray. Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely, Staff Counsel were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

Representative Dickson introduced guest speaker, J. Keith Crisco, Secretary of North Carolina Department of Commerce. He expressed the importance of teamwork in the Department of Commerce and other state agencies and the need for advertising our state for global identity. Mr. Crisco emphasized the need to review incentives and felt that we should do the most efficient job with the money that is spent. He feels we have excellent tools. For example, JDIG and One North Carolina are great. The tax incentives are being reviewed very seriously. There are some questions about the effectiveness of the cost benefits. He explained in his earlier training that everything has a cost—what is the benefit, and what is the best trade-off of the money we spend. He has a committee looking at this matter and should have results quickly. Mr. Crisco answered questions from Committee members, and Representative Dickson thanked him for his participation.

Because this was the first Committee meeting of the 2009-2010 session, Chair Dickson called on members to introduce themselves and tell what districts they represent.

Chair Dickson recognized Senator Richard Stevens to explain his bill as follows:

SB 5- A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CORPORATION THAT IS A MANUFACTURER, WHOLESALE DEALER, OR RETAIL DEALER OF CROSSBOWS MAY OBTAIN A CONTINUING PERMIT FOR THE PURCHASE OR RECEIPT OF CROSSBOWS UPON APPLICATION TO THE SHERIFF OF THE COUNTY IN WHICH THE CORPORATION IS LOCATED, AND TO PROVIDE THAT THE RECORD-KEEPING REQUIREMENT FOR SALES OF CROSSBOWS DOES NOT APPLY TO A MANUFACTURER OF CROSSBOWS AND DOES NOT APPLY TO A WHOLESALE DEALER OF CROSSBOWS WHEN THE SALES ARE TO OTHER WHOLESALE DEALERS OR RETAIL DEALERS.

Senator Stevens said that SB 5 is about jobs. He received a call in January from a company in another state. They have a presence in North Carolina in a different type of industry and expressed an interest in moving their crossbow manufacturing company to North Carolina and wanted a tweak in our law. If a crossbow is bought in North Carolina today, one must have either a pistol permit or a conceal carry permit. The bill would allow manufacturers, retailers or wholesalers to have one continuing permit. The end purchaser still has to have an individual permit from the Sheriff, but the manufacturer, the wholesaler, and the retailer can have a continuing permit issued by the Sheriff. It could mean another 75 jobs for North Carolina if the bill is passed.

Senator Stevens answered questions from Committee members. Representative Carney moved for a favorable report for SB 5 and that the bill be re-referred to the Committee on Judiciary III. The motion passed.

The meeting then adjourned at 1:43 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP
Name of Committee

March 4, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Nienow	DOC
Doug Lassiter	NCSTA
Leslie Scott	NC Rural Center
Fred Baggett	Smith Moore Leatherwood LLP
Doug Heman	Williams Mullen

VISITOR REGISTRATION SHEET

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP — March 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Ambrose	Electr. Cities
Michael Thompson	Dominion
Scott Gamonce	Duke Energy

House Pages

Commerce, Small Business & Entrepreneurship

Name Of Committee: _____ Date: 3-4-09

1. Name: Jeremy Blaylock

County: Wake county

Sponsor: Dan Blue

2. Name: Vernon Arrington

County: Edgecombe

Sponsor: Farmer-Butterfield

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: EARL COKER

2. Name: TOUSAINT AVENT

3. Name: FRANK PREVO

4. Name: _____

J. KEITH CRISCO

PERSONAL DATA

Residence - 1263 Thayer Drive, Asheboro, NC

Family Data - Married to the former Jane Sidbury of Wilmington, NC

Children - John, Vice President - Asheboro Elastics, Asheboro, NC
Jeff, Vice President - Asheboro Elastics, Asheboro, NC
Julia, Mother and Housewife - Asheboro, NC

Born and raised on dairy farm near Aquadale, NC

EDUCATIONAL BACKGROUND

A.B. Mathematics and Physics, Pfeiffer University, Misenheimer, NC, 1964
M.B.A. Harvard Business School, Boston, MA, 1968

WORK EXPERIENCE

Since February, 1986 - President, Chairman of Asheboro Elastics Corporation, Asheboro, NC

1978 - 1986 President, Stedman Elastics, Asheboro, NC

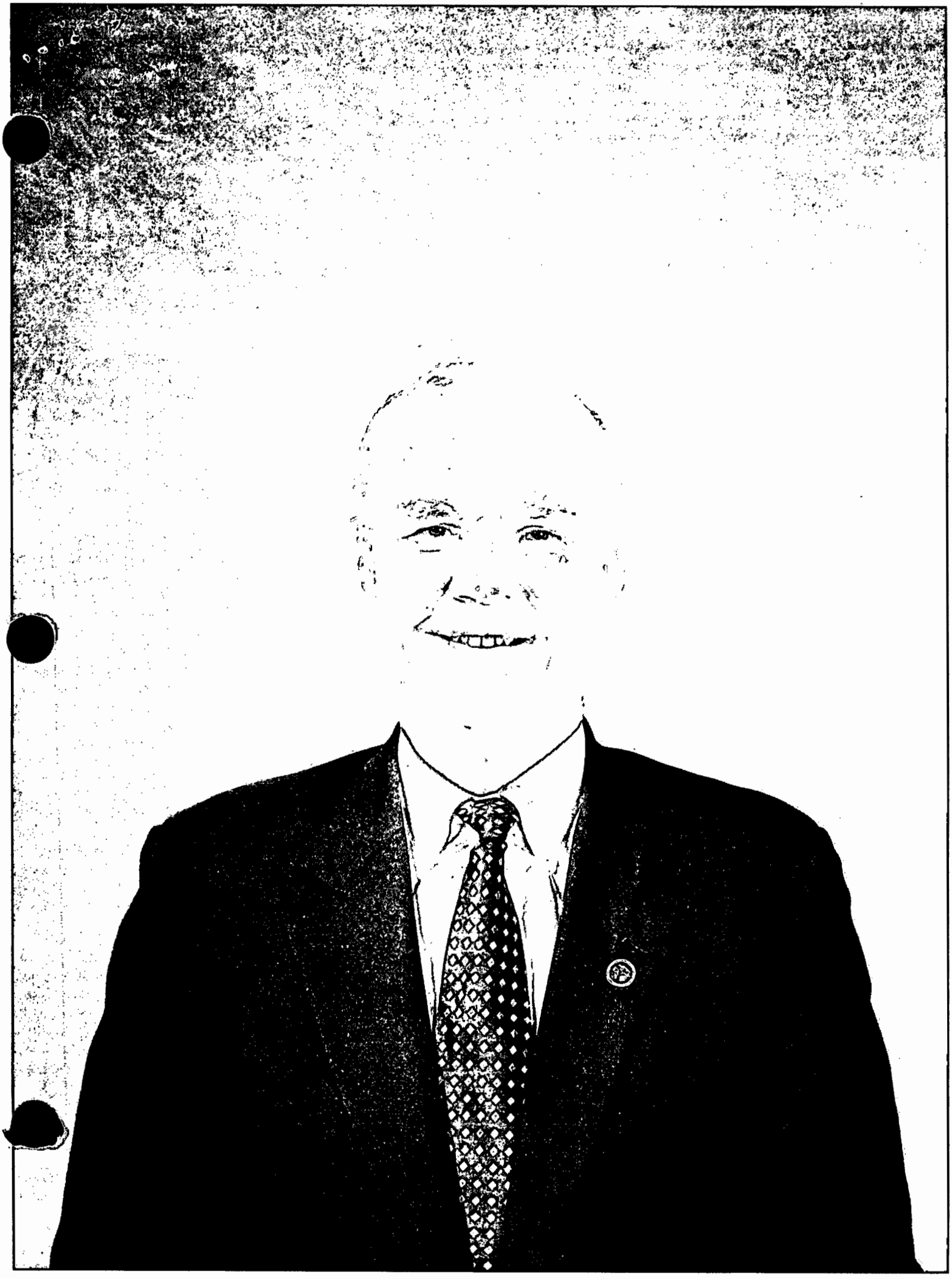
1968 - 1978 Burlington Industries
Assistant to Executive VP, Greensboro, NC
Account Manager, Chicago, IL
National Accounts Manager, New York, NY

1970 - 1971 White House Fellow, Washington, DC
Assistant to Secretary of Commerce

COMMUNITY ACTIVITIES

- Board of Trustees, Former Chairman, Pfeiffer University, Misenheimer, NC (1981-2008)
- City Councilman - City of Asheboro, NC (2003-present)
- Chairman of Board, Globio, Inc., Portland, OR
- Former Chairman, N.C. Center for Public Policy Research, Raleigh, NC
- Chairman Administrative Board, Lay Leader, Delegate to Annual Conference, Sunday School Teacher, First United Methodist Church, Asheboro, NC
- Chairman - American Apparel Producers Network
- Member Dean's Advisory Council - North Carolina School of Public Health
- Board Member - American Apparel and Footwear Association
- Board Member - Randolph Community College, Asheboro, NC
- Board Member - North Carolina Community Foundation
- Board Member - North Carolina Action for Children
- Board Member - TC^2, Cary, NC
- Board Member, Bennett College, Greensboro, NC (1969-1974)
- Board Member, Cary, IL, School Board (1972-1974)
- Board Member, Vice Chairman, Asheboro City School Board (1981-1987)

Board Member, Randolph County Salvation Army
Past Chairman, Randolph County Economic Development Corporation
White House Fellowship Regional Selection Panel (1980-2008)



2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 5 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CORPORATION THAT IS A MANUFACTURER, WHOLESALE DEALER, OR RETAIL DEALER OF CROSSBOWS MAY OBTAIN A CONTINUING PERMIT FOR THE PURCHASE OR RECEIPT OF CROSSBOWS UPON APPLICATION TO THE SHERIFF OF THE COUNTY IN WHICH THE CORPORATION IS LOCATED, AND TO PROVIDE THAT THE RECORD-KEEPING REQUIREMENT FOR SALES OF CROSSBOWS DOES NOT APPLY TO A MANUFACTURER OF CROSSBOWS AND DOES NOT APPLY TO A WHOLESALE DEALER OF CROSSBOWS WHEN THE SALES ARE TO OTHER WHOLESALE DEALERS OR RETAIL DEALERS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 5: Continuing Crossbow Permit/Dealers & Manufacturers

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	March 3, 2009
Introduced by:	Sen. Stevens	**Prepared by:**	Drupti Chauhan*
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 5 amends the law to provide that if a manufacturer, wholesale dealer, or retail dealer of crossbows has obtained a permit for the purchase or receipt of a crossbow, the permit will be deemed to be a continuing permit with no expiration date. The bill also provides that a manufacturer of crossbows or a wholesale dealer who sells crossbows to other wholesale dealers or retail dealers is exempt from the record keeping requirements for sales.***

CURRENT LAW:

Under current law, it is unlawful for any person, firm or corporation to sell, give away or transfer or to purchase or receive a crossbow unless the purchaser or receiver first obtains a permit from the sheriff of the county in which the purchaser or receiver resides, or unless the purchaser ore receiver holds a valid North Carolina concealed handgun permit. A violation of this provision is punishable as a Class 2 misdemeanor.

The sheriff of each county is authorized to issue a permit when the sheriff:

- Verifies, by a criminal history background check, that it would not be a violation of law for the applicant to purchase, transfer, receive or possess the weapon.
- Is satisfied that the applicant has good moral character.
- Is satisfied that the applicant desires possession of the weapon for a legitimate purpose.

The permit expires five years from the date of issuance.

Dealers of crossbows are required to keep accurate records of all sales of crossbows, including the name and residence of the purchaser, and date of sale. A violation of this provision is punishable as a Class 2 misdemeanor.

BILL ANALYSIS: Senate Bill 5 adds a new section which provides that if a corporation that is a manufacturer, wholesale dealer, or retail dealer of crossbows obtains a permit for the sale, giveaway, transfer, purchase, or receipt of a crossbow, the permit is deemed to be a continuing permit with no expiration date. The permit shall apply to all subsequent purchases or receipts by the corporation.

The permit would have to contain an identification number and would not have any expiration date.

A manufacturer, wholesale dealer, or retail dealer of crossbows that has obtained a permit may receive crossbows deliveries in the course of business without displaying the permit to the person delivering the crossbows.

The bill also relieves manufacturers from the obligation of keeping records of all sales. Wholesale dealers are also exempt from keeping records of sales that are to other wholesale dealers or to a retail dealer of crossbows. Retail dealers are still required to keep records of sales.

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

S5-SMRQ-7(e3) v2

**Karen Cochrane-Brown contributed significantly to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 5*
Second Edition Engrossed 2/17/09
Third Edition Engrossed 2/18/09

Short Title: Continuing Crossbow Permit/Dealers & Manufac. (Public)

Sponsors: Senator Stevens.

Referred to: Commerce.

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CORPORATION THAT IS A MANUFACTURER, WHOLESALE DEALER, OR RETAIL DEALER OF CROSSBOWS MAY OBTAIN A CONTINUING PERMIT FOR THE PURCHASE OR RECEIPT OF CROSSBOWS UPON APPLICATION TO THE SHERIFF OF THE COUNTY IN WHICH THE CORPORATION IS LOCATED, AND TO PROVIDE THAT THE RECORD-KEEPING REQUIREMENT FOR SALES OF CROSSBOWS DOES NOT APPLY TO A MANUFACTURER OF CROSSBOWS AND DOES NOT APPLY TO A WHOLESALE DEALER OF CROSSBOWS WHEN THE SALES ARE TO OTHER WHOLESALE DEALERS OR RETAIL DEALERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-406.1. Permit issued to manufacturer, wholesale dealer, or retail dealer of crossbows deemed to be a continuing permit.**

(a) Notwithstanding any other provision of this Article, a corporation that is a manufacturer of crossbows, a wholesale dealer of crossbows, or a retail dealer of crossbows may obtain a permit for the purchase or receipt of crossbows, as provided by this section, by applying to the sheriff of the county in which the corporation is located. The permit shall be a continuing permit with no expiration date and shall satisfy the permitting requirements under this Article for each future purchase or receipt of a crossbow by the corporation.

(b) The sheriff of any and all counties of this State shall issue to any corporation that is a manufacturer of crossbows, a wholesale dealer of crossbows, or a retail dealer of crossbows in any county a permit to purchase or receive crossbows from any person, firm, or corporation offering to sell or dispose of crossbows. The permit shall contain an identification number and shall have no expiration date. In determining whether to issue the permit, the sheriff shall apply the standards contained in G.S. 14-404, to the extent applicable.

(c) Notwithstanding G.S. 14-402, a manufacturer of crossbows, wholesale dealer of crossbows, or retail dealer of crossbows that is issued a permit under this section may receive a crossbow delivered to the manufacturer, wholesale dealer, or retail dealer in the course of business without exhibiting the continuing permit to the person delivering the crossbow."

SECTION 2. G.S. 14-402(c) reads as rewritten:

"(c) The following definitions apply in this ~~section:~~Article:

(1) Antique firearm. – Defined in G.S. 14-409.11.

(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This device is mechanically held at full or partial draw and released by a trigger or similar mechanism that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

(4) Historic edged weapon. – Defined in G.S. 14-409.12.

(5) Manufacturer of crossbows. – A corporation that manufactures or produces crossbows.

(6) Retail dealer of crossbows. – A corporation that sells crossbows to the ultimate consumer of the product.

(7) Wholesale dealer of crossbows. – A corporation that acquires crossbows for sale to another wholesale dealer of crossbows or to a retail dealer of crossbows."

SECTION 3. G.S. 14-406 reads as rewritten:

"**§ 14-406. Dealer to keep record of sales.**

(a) Every dealer in pistols and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State.

(b) This section does not apply to any of the following:

(1) A manufacturer of crossbows.

(2) A wholesale dealer of crossbows for any sale that is either to another wholesale dealer of crossbows or to a retail dealer of crossbows."

SECTION 4. This act is effective when it becomes law.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, March 11, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Committee Meeting Notice

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 22	Enhance Youth Employment Protections.	Representative Weiss Representative Goodwin Representative Luebke Representative Bryant
HB 23	Strengthen Child Labor Violation Penalties.	Representative Weiss Representative Luebke Representative Bryant Representative Goodwin
HB 85	Increase Raffle Prize Limit.	Representative Burr Representative Sager

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:50 p.m. on **March 06, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE
Wednesday, March 11, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor
HB 23	Strengthen Child Labor Penalties.	Representative Weiss Representative Luebke Representative Bryant Representative Goodwin
HB 22	Enhance Youth Employment Protections.	Representative Weiss Representative Goodwin Representative Luebke Representative Bryant
HB 85	Increase Raffle Prize Limit.	Representative Burr Representative Sager

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, March 11, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, March 11, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Carney, Goforth, Starnes, Stewart, Wilkins, Vice Chairs; Representatives Allred, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Harrell, Holloway, McGee, Mills, Pierce, Rapp, Samuelson, Steen, Tarleton, Warren, and Wray. Karen Cochrane-Brown, Drupti Chauhan, Brad Krehely, staff Counsel were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 23 – A BILL TO BE ENTITLED AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

Sponsor(s): Representatives Weiss, Luebke, Bryant, Goodwin

Representative Tarleton moved to adopt the proposed committee substitute, and it was adopted. Representative Weiss presented and explained the bill and said that our penalties are currently out of step and this is an effort to address that problem and to make sure that employers are on notice that there is a very strong deterrent from hiring young people and putting them in harms way. HB 23 strengthens penalties for violations of the Wage and Hour laws and strengthens OSHA penalties in North Carolina so that when serious violations occur that result in injuries or deaths to young workers, the Department of Labor has the tools it needs to deter and crack down on this behavior. Brad Krehely further explained penalties for violations of the laws. Discussion followed. John Hoomani, General Counsel, NC Department of Labor answered questions and provided statistics concerning youth employment complaints. Dr. Carol Runyan, Director of Injury Prevention Research Center-UNC, addressed the Committee and provided information from interviews with young people regarding their hazardous work experiences. She also provided information and answered questions regarding violations of the law. Representative Farmer-Butterfield moved for a favorable report to the

proposed committee substitute, unfavorable to the original bill and re-referral to Committee on Judiciary II.

HB 22 – A BILL TO BE ENTITLED AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.
Sponsor(s): Representatives Weiss, Goodwin, Luebke, and Bryant
Representative Carney moved for adoption of the proposed committee substitute, and it was adopted. Representative Goodwin presented the bill to the Committee. HB 22 requires reporting on enforcement investigative activity from the Department of Labor. She explained from the bill what has to be in the written report which will be submitted to the North Carolina General Assembly, the Legislative Study Commission on Children and Youth, and the NCGA Fiscal Research Division. Issues identified are what General Assembly members had asked for as policymakers. The bill also asked that the Department of Labor give the General Assembly members their recommendations about any obstacles in the Wage and Hour Act that would prevent them from investigating enforcing and discussing with the members about policy changes needed as well as funding needed from the General Assembly to go to the Department of Labor to identify and eliminate any of those obstacles. Representative Goodwin answered questions from Committee members. John Hoomani, General Counsel, NC Department of Labor answered questions from Committee members. Representative Wilkins moved for a favorable report to proposed committee substitute for HB 22, unfavorable to the original bill and a re-referral to the Committee on Judiciary II. The motion passed.

HB 85 – A BILL TO BE ENTITLED AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES. Sponsor(s): Representative Burr and Representative Sager
Representative Goforth moved to adopt the proposed committee substitute, and it was adopted. Representative Burr presented the bill. The bill is one to assist in increasing the raffle prize limit. He was approached by a local non-profit organization that has to have a joint effort with two additional non-profit organizations in order to do their fundraising each year to support their organizations. The bill is supported by North Carolina Center for Non-profits. Representative Coates told the Committee that Downtown Salisbury asked her to co-sponsor the bill. Representative Samuelson moved for a favorable report for the proposed committee substitute, which changes the title, unfavorable to the original bill, and re-referral to the Committee on Judiciary III. The motion passed.

The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom VITALIANO	CHILD FATALITY TASK FORCE
Kimberly Rauscher	Univ of NC Injury Prevention Research Ctr
Carol Runyan	Univ. of NC - Injury Prevention Research Center
James Alexander	The Charlotte Observer
Jessica HAYES	NC Home Builders Assn
Sara Nienow	NC Dept. of Commerce
Paula A. Wolf	El Pueblo / NC NOW
Al Ripley	NC Justice Ctr
Soreni Schmidt	Action for Children NC
Polly Williams	Triangle Older Women's League
Annette Newkirk	Office of the Governor

VISITOR REGISTRATION SHEET

House Commerce, Small Business and Entrepreneurship — March 11, 2009

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Griffin	School of Gov.
Heather Barnett	Hunton & Williams
MaryBe McMillan	NC AFL-CIO
Mike Obum	NC State AFL-CIO
John Hoomon	NCDOL
Art Britt	NCDOL
D. David Fabian	Fleet Cities
Elizabeth R. Lawson	Delta Kappa Gamma - Eta State
Devon A. Barnes	for Rep. Alma Adams
David Heinen	NC Center for Nonprofits
Jim Johnson	BSA

VISITOR REGISTRATION SHEET

House Commerce, Small Business and Entrepreneurship — March 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc. of REALTORS
Marquise Joyner	Farmer-Butterfield Intern
John Goodman	NC Chamber

HOUSE PAGES

NAME OF COMMITTEE Commerce, Small Business and Entrepreneurship DATE 3/11/09

1. Name: Caroline Smith
   County: Wake
   Sponsor: Speaker Joe Hackney
2. Name: Rachel Douglas
   County: Wake
   Sponsor: Rep. Paul Stam
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: Earl Coker
2. Name: Charles Williams
3. Name: Frank Prevo
4. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 23 A BILL TO BE ENTITLED AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 23
PROPOSED COMMITTEE SUBSTITUTE H23-PCS80136-MG-6

Short Title: Strengthen Child Labor Violation Penalties. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) for ~~each violation.~~ the first violation and not to exceed one thousand dollars ($1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.15(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government."

SECTION 3. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) per investigation by the Commissioner or ~~his~~ the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall ~~consider:~~ consider each of the following:

(1) The appropriateness of the penalty for the size of the business of the employer ~~charged; and~~charged.
(2) The gravity of the violation.
(3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 4. G.S. 95-138(b) reads as rewritten:

"(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.
(2) The gravity of the violation.
(3) The good faith of the employer.
(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
(5) Whether the violation involves injury to an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner."

SECTION 5. G.S. 95-139 reads as rewritten:

"**§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and ~~said~~ the violation causes the death of any ~~employee,~~ employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ~~($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000).~~($10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

(1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000) if the subsequent violation results in the death of an employee 18 years of age or older.
(2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars ($40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of (i) not more than ten thousand dollars ~~($10,000).~~($10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars ($20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege."

SECTION 6. This act becomes effective December 1, 2009, and applies to violations occurring or offenses committed on or after that date.

Handout #1

SOME FACTS ON YOUTH EMPLOYMENT IN THE US AND NORTH CAROLINA

UNITED STATES

Youth Employment:

- About 75-80% of US high school students work at some point before they graduate (1). Over 50% of all 14- to 17-year-olds work in the retail or service industry (i.e., restaurants, stores, health care) where they mainly work as cashiers or food service workers (2).
- Most of those who work do so year round (3, 4). US teens work an average of 16 hours per week and work 2-3 days per week during the school year (2), while in the summer they work an average of about 24 hours a week (4).

Work-related Injuries:

- About 230,000 youth under age 18 suffer non-fatal work-related injuries annually (5, 6). Most require first aid for their injuries but 55,000 are treated in hospital emergency rooms (6) and about 1/3 suffer permanent impairments (7). Most teen work injuries are lacerations, sprains and strains, and burns (2, 4), mainly from lifting or moving heavy objects (8, 9), handling hot liquids (9, 10), and using equipment or tools (8, 11-14).
- 65-70 teens under age 18 die each year from work related injuries (5, 6). Overall, transportation incidents are the most common cause of these fatalities (6) while robberies are responsible for 25-50% of those occurring in retail (15) and falls and electrocutions are leading causes of youth fatalities in construction (16).

Hazard Exposures, Supervision & Training:

- Youth working in the retail or service industry report using many types of dangerous equipment including power equipment (47%) and motor vehicles (32%). About 10% report working totally alone, 26% without adult supervision, 82% report working after 7pm on school nights and 52% after 9pm, while 9% work alone after dark (when risks of robbery and assault are greatest) (17).
- Nearly two thirds of teens have no workplace safety training (17-21) and half have not been trained on what to do in the case of a robbery, how to handle angry customers or what to do if they are assaulted (17).
- Many youth are unaware of their rights at work or of child labor laws. As many as 75% of surveyed youth say they have not been trained on these rights (19, 20) and few know the specific restrictions of the child labor laws (22).

Child Labor Violations

- In 2003, 37% of surveyed teens working in the retail or service industry reported performing a prohibited task, 11% worked past the latest hour allowed on a school night, and 14% reported working "off the clock"(23). Also, 39% said they did not have the required work permit while working in their most recent job (23). The US Bureau of Labor Statistics estimates that nearly 300,000 youth ages 15-17 are illegally employed annually (24).
- Between 1984 and 1998, nearly half of all occupational fatalities among young construction workers, were due to apparent child labor violations (25).

NORTH CAROLINA

Work-related Injuries:

- 1,430 youth age 14- to 19-year-olds in NC suffered non-fatal work injuries involving days away from work in 2007 (26). An earlier survey of 572 teens indicated that over half had experienced an injury at work serious enough to restrict work or school attendance for at least a day, most often from being cut (29%) or burned (24%) (27).

  Between 1980 and 1989, 29 youth ages 11 to 17 were fatally injured at work (28) and between 1990 and 2008, at least 38 youth ages 12-17 were also killed on the job (unpublished results) (28).

Prepared in March 2009 by: Carol W. Runyan, PhD and Kimberly J. Rauscher, ScD
University of North Carolina Injury Prevention Research Center

Hazard Exposures, Supervision & Training:

- In 1996, 67% of surveyed teens working in NC reported using some type of dangerous equipment (e.g. food slicer, deep fat fryer, case cutter). Half reported using equipment that could lead to burns and 60% used equipment that could lead to cuts. In addition, 64% reported that they had worked between 7 and 11pm and 14% had worked between 11pm and 7am. Only 54% reported some type of safety training (27).

- NC teens working in construction perform a wide variety of tasks associated with significant risk of serious injury. Nearly 20% of these youth reported working in settings where they were not in hearing or visual contact with other workers (29).

Child Labor Violations:

- Among NC construction workers (2001), 84% reported doing work that is prohibited for their age group (e.g., electrical work, trench work, working on roofs, using power equipment) (29).

- Child labor violations are often linked to fatalities. Approximately 86% of the 29 cases of young worker fatalities occurring in NC between 1980-89, involved a child labor law violation (28). Preliminary data suggest that at least 63% of those occurring between 1990 and 2008 involved one or more violation of the federal task restrictions.

References:

1. Greenberger E, Steinberg L. When teenagers work: The psychological and social costs of adolescent employment. New York: Basic Books, 1986.
2. Institute of Medicine. Protecting Youth at Work: Health, Safety and Development of Working Children and Adolescents in the United States. Washington, DC: National Research Council. National Academy Press, 1998.
3. U.S. Bureau of Labor Statistics. "News". Washington, DC: US Department of Labor, 2003.
4. United States Department of Labor. Report on the Youth Labor Force. Revised. Washington, DC: United States Department of Labor, 2000:83.
5. National Institute for Occupational Safety and Health. NIOSH Alert: Preventing Deaths, Injuries and Illnesses of Young Workers. Washington, DC: US Department of Health and Human Services. Centers for Disease Control and Prevention, 2003.
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Prepared in March 2009 by: Carol W. Runyan, PhD and Kimberly J. Rauscher, ScD
University of North Carolina Injury Prevention Research Center

Provided by NC Dep't of Labor - Rep. J. Weiss

Handout #2

Survey of Child Labor Offenses Civil Penalty Amounts

State	Civil Penalty Amount	Statute Citation	Date Enacted
North Carolina	$250 Maximum	N.C. Gen. Stat. § 95-25.23	July 1, 1979
Kentucky	$100 to $250 for 1st Offense; up to $650 for 2nd Offense; up to $1,000 for 3rd Offense	Ky. Rev. Stat. Ann. § 339.990	July 13, 1990
Arkansas	$50 to $1,000 Maximum	Ark. Code. Ann. § 11-6-103	March 13, 1991
Alabama	$100 to $500 for 1st Offense; $500 to $1,000 for Subsequent Offenses	Ala. Code. § 25-8-59	July 31, 1995
South Carolina	$1,000 Maximum for 1st Offense; $5,000 for Subsequent Offenses	S.C. Code Ann. § 41-13-25	June 9, 1998
Tennessee	$150 to $1,000 Maximum; $1,000 to $10,000 if Child Under 14	Tenn. Code Ann. § 50-5-112	July 1, 2001
Federal	$11,000 Maximum and up to $50,000 if a Child is Seriously Injured or Dies in the Course of Employment Which Penalty May Be Doubled if Repeat or Willful Violation	29 U.S.C. § 216	January 7, 2002
West Virginia	$50 to $200 for 1st Offense; $200 to $1,000 for Subsequent Offenses	W. Va. Code § 21-6-10	June 9, 2002
Virginia	$1,000 Maximum and up to $10,000 if a Child is Seriously Injured or Dies in the Course of Employment	Va. Code Ann. § 40.1-113	March 20, 2007
Georgia	None - Applies Federal Law		

STRENGTHEN PENALTIES FOR CHILD LABOR VIOLATIONS

North Carolina's current statutory scheme for child labor violations provides for maximum civil penalties of:

- $250 per youth employment violation regarding working hours or types of work;
- $250 per employee, up to a maximum of $1,000 per investigation for recordkeeping violations;
- $7,000 for serious OSHA violations; and
- Between $5,000 and $70,000 for willful or repeat OSHA violations.
- North Carolina also subjects employers to (i) a Class 2 misdemeanor and a maximum criminal fine of $10,000 for the first willful OSHA violation that causes the death of any employee and (ii) a Class 1 misdemeanor and a maximum criminal fine of $20,000 for subsequent willful violations that result in the death of any employee.

The draft bill essentially doubles the existing maximum civil penalties and, in some cases, adds a new higher penalty for subsequent or more serious violations as follows:

- $500 for the first youth employment violation regarding working hours or types of work, and a new penalty of up to $1,000 for subsequent violations;
- $250 per employee, up to a maximum of $2,000 per investigation for recordkeeping violations;
- The $7,000 civil penalty for serious OSHA violations remains unchanged, but the bill adds a new maximum penalty of $14,000 for serious violations that involve endangerment or injury to employees less than 18 years of age. New language requires the Labor Commissioner to consider whether the violation involves endangerment or injury to an employee less than 18 years of age in determining the appropriateness of the civil penalty; and
- The $5,000 to $70,000 civil penalty for willful or repeat OSHA violations remains unchanged.
- The bill also adds provisions making (i) a first willful OSHA violation that results in the death of an employee less than 18 years of age a Class 2 misdemeanor, subject to a maximum criminal fine of $20,000 and (ii) subsequent willful violations that result in the death of an employee less than 18 years of age a Class 1 misdemeanor, subject to a maximum criminal fine of $40,000.

COMPARISON TO OTHER STATES

- South Carolina provides for a written warning for a first violation of a child labor regulation or a fine of up to $1,000. Fines for second or subsequent violations subject an employer to a fine of up to $5,000 per offense. Factors used in determining the amount of the fine are the size of the employer's business, the gravity of the violation, the good faith of the employer and the employer's history of previous violations. Recordkeeping violations carry a civil penalty of up to $100 for second and subsequent violations.

- In Tennessee, employers who violate the Child Labor Act are guilty of a class A misdemeanor and at the Labor Commissioner's discretion, may be assessed a civil penalty of not less than $150 and not more than $1000 per violation. In determining the amount of the civil penalty, Tennessee (like South Carolina) requires consideration of the size of the employer's business, the gravity of the violation and whether the employer's violation was intentional.

- Virginia imposes a maximum civil penalty of $1,000 for "non-injury" child labor violations and $10,000 for violations that result in serious injury or death of a child. The size of the employer and the gravity of the violation must be considered in determining the amount of the penalty.

- Child labor law violations under the Georgia Code are punishable as a misdemeanor.

- Florida makes a violation of its child labor laws a second degree misdemeanor. In addition, the employer is subject to a fine not to exceed $2,500 per offense. Florida's statute specifically provides that the amount of the fine shall be determined by the severity and repetition of the offense, and the degree to which the violation endangers a minor's health and safety.

HOUSE BILL 23

Short Title:	Strengthen Child Labor Violation Penalties.	(Public)
Sponsors:	Representatives Weiss, Luebke, Bryant, Goodwin (Primary Sponsors); K. Alexander, M. Alexander, Cotham, Earle, Fisher, E. Floyd, Glazier, Hall, Harrison, Insko, Jones, Lucas, McLawhorn, Michaux, Ross, and E. Warren.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) for ~~each violation.~~ the first violation and not to exceed one thousand dollars ($1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.15(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government."

SECTION 3. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) per investigation by the Commissioner or ~~his~~ the

Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall ~~consider:~~consider each of the following:

(1) The appropriateness of the penalty for the size of the business of the employer ~~charged; and~~charged.

(2) The gravity of the violation.

(3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 4. G.S. 95-138 reads as rewritten:

"**§ 95-138. Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) may be assessed for each willful or repeat violation.

(1a) A penalty of up to fourteen thousand dollars ($14,000) shall be assessed for each serious violation that involves injury to, or endangerment of, an employee under 18 years of age.

(2) A penalty of up to seven thousand dollars ($7,000) shall be assessed for each serious ~~violation.~~violation that does not involve injury to, or endangerment of, an employee under 18 years of age.

(2a) A penalty of up to seven thousand dollars ($7,000) may be assessed for each violation that is adjudged not to be of a serious nature.

(3) A penalty of up to seven thousand dollars ($7,000) may be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

(4) A penalty of up to seven thousand dollars ($7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.

(2) The gravity of the violation.

(3) The good faith of the employer.

(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

(5) Whether the violation involves injury to, or endangerment of, an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 5. G.S. 95-139 reads as rewritten:

"**§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and said violation causes the death of any employee, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000). This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000). Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege.

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000); except that if the conviction is for a subsequent violation committed after a first conviction of such person under this section, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars ($40,000). This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, and pertaining to an employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000)."

SECTION 6. This act becomes effective December 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 22 A BILL TO BE ENTITLED AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 22
PROPOSED COMMITTEE SUBSTITUTE H22-PCS50208-RQ-2

Short Title: Enhance Youth Employment Protections. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-25.23C. Report on youth employment enforcement activities.**

(a) Findings. – The General Assembly finds that:

(1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.

(2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.

(3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) By February 1, 2010, the Commissioner shall make a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment for the period commencing January 1, 2008, and ending December 31, 2008. The written report shall include at least all of the following:

(1) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.

(2) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.

(3) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.

(4) The total number of administrative proceedings involving youth employment violations.

(5) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.

(6) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(8) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.

(9) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes.

(d) Beginning February 1, 2011, and annually thereafter, the Commissioner shall submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly updating the information set forth in the report required by subsection (c) of this section. Each written report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date of the last written report submitted."

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

HOUSE BILL 22:
Enhance Youth Employment Protections

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	March 11, 2009
Introduced by:	Reps. Weiss, Goodwin, Luebke, Bryant	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	PCS to First Edition H22-CSRQ-2[v.1]		

SUMMARY: ***House Bill 22 would require the Commissioner of Labor to report to the General Assembly on enforcement activities undertaken by the Department of Labor regarding youth employment protections in North Carolina.***

The Proposed Committee Substitute makes changes to the reporting requirement so that the report is sent to the Legislative Study Commission on Children and Youth rather than the Joint Legislative Commission on Governmental Operations.

CURRENT LAW: G.S. 95-5 requires the Commission of Labor (Commissioner) to file with the Governor (and the General Assembly in the years that it is in session) an annual report covering the activities of the Department of Labor (DOL) and any recommendations for statutory changes. According to G.S. 95-6, the report must also include statistical details on "all divisions of labor in the State".

BILL ANALYSIS: The PCS for House Bill 22 would require the Commissioner to report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on enforcement activities undertaken by the DOL regarding youth employment protections in the State. The bill would include the following findings by the General Assembly:

- That there is an increasing need to protect the educational opportunities of youths under 18 and prohibit their employment in jobs that hurt their health and well-being.
- Statutory protections are meaningless without effective enforcement
- It is the best interest of the State and its youngest workers to ensure that the State's employers are in compliance with the youth employment laws

The Commissioner is required to make a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division by February 1, 2010 on the DOL's investigative, inspection and enforcement activities under the State's Wage and Hour Act for youth employment for the period between January 1, 2008 and December 31, 2008. The report must include:

- The total number of complaints received by DOL alleging youth employment violations under the Wage and Hour Act or any regulations or both.
- The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the DOL.
- The total number of investigations conducted by the DOL on alleged youth employment violations including the length of the investigations and the number of investigators assigned.
- The total number of administrative proceedings on youth employment violations.

- The total number and the identity of employers cited for youth employment violations and the industries/occupations that received the most and least number of complaints.
- The total number and dollar amount of the civil penalties assessed and collected for violations of youth employment.
- An explanation of any obstacles that prevented the DOL from enforcing any provisions concerning youth employment and any recommended statutory changes to strengthen the DOL's oversight and enforcement of youth employment laws and regulations.
- Recommendations about the funding needed by the DOL to eliminate identified obstacles that restrict the enforcement of youth employment laws and effectively implement any recommended changes.

Beginning February 1, 2011 and annually thereafter, the Commissioner must submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division updating the information required in the report due on February 1, 2010. The annual report must contain data and information about the calendar year preceding the date of the last written report submitted.

H22-SMRQ-11(CSRQ-2) v2

H 1

HOUSE BILL 22

Short Title: Enhance Youth Employment Protections. (Public)

Sponsors: Representatives Weiss, Goodwin, Luebke, Bryant (Primary Sponsors); K. Alexander, M. Alexander, Cotham, Fisher, E. Floyd, Glazier, Hall, Harrison, Insko, Lucas, McLawhorn, Michaux, Ross, E. Warren, and Wray.

Referred to: Rules, Calendar, and Operations of the House.

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-25.23C. Report on youth employment enforcement activities.**

(a) Findings. – The General Assembly finds that:

(1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.

(2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.

(3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) By February 1, 2010, the Commissioner shall make a written report to the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment for the period commencing January 1, 2008, and ending December 31, 2008. The written report shall include at least all of the following:

(1) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.

(2) The specific types of youth employment violations alleged, and the ages of the youths referenced, in the complaints received by the Department of Labor.

(3) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.

(4) The total number of administrative proceedings involving youth employment violations.

(5) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.

(6) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(8) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.

(9) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes.

(d) Beginning February 1, 2011, and annually thereafter, the Commissioner shall submit a written report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly updating the information set forth in the report required by subsection (c) of this section. Each written report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date of the last written report."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 85 A BILL TO BE ENTITLED AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 85
PROPOSED COMMITTEE SUBSTITUTE H85-PCS50209-RO-4

Short Title: Increase Raffle Prize Limit. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES AND TO AUTHORIZE THE RAFFLE OF REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.15 reads as rewritten:

"**§ 14-309.15. Raffles.**

(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), or for any bona fide branch, chapter, or affiliate of such organization, and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(b) For purposes of this section "raffle" means a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

(c) Raffles shall be limited to two per nonprofit organization per year.

(d) Except as provided in subsection (g) of this section, ~~The~~ the maximum cash prize that may be offered or paid for any one raffle is ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000). ~~No real property may be offered as a prize in a raffle.~~ The total cash prizes offered or paid by any nonprofit organization or association may not exceed ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000) in any calendar year.

(e) Raffles shall not be conducted in conjunction with bingo.

(f) As used in this subsection, "net proceeds of a raffle" means the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the nonprofit organization or association for charitable, religious, educational, civic, or other nonprofit purposes. None of the net proceeds of the raffle may be used to pay any person

to conduct the raffle, or to rent a building where the tickets are received or sold or the drawing is conducted.

(g) Real property may be offered as a prize in a raffle. The maximum appraised value of real property that may be offered for any one raffle is five hundred thousand dollars ($500,000). The total appraised value of all real estate prizes offered by any nonprofit organization or association may not exceed five hundred thousand dollars ($500,000) in any calendar year."

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

HOUSE BILL 85:
Increase Raffle Prize Limit

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	March 10, 2009
Introduced by:	Reps. Burr, Sager	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	Proposed Committee Substitute to First Edition		

SUMMARY: The Proposed Committee Substitute for House Bill 85 increases the maximum limit for cash and merchandise used as raffle prizes from $50,000 to $125,000. The bill would also authorize the raffle of real property with an appraised value of up to $500,000.

CURRENT LAW:

G.S. 14-309.15 authorizes nonprofit organizations and associations recognized by the Department of Revenue to conduct raffles in accordance with the restrictions contained in the law. The law defines "raffle" as a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

The maximum amount that can be offered as a cash prize is $50,000. If merchandize is used as a prize, the maximum fair market value of the merchandise may be $50,000. A nonprofit is limited to two raffles per year. The total value of all prizes, whether in cash or merchandise, offered in a calendar year cannot exceed $50,000.

The nonprofit organization must use no less than 90% of the net proceeds of a raffle for charitable, religious, educational, civic or other nonprofit and net proceeds may not be used to pay a person to conduct the raffle or to rent the space used for the raffle.

A person who violates the law on conducting raffles is guilty of a Class 2 misdemeanor.

BILL ANALYSIS:

The PCS for House Bill 85 amends the law to allow any bona fide branch, chapter or affiliate of a nonprofit organization to conduct raffles on the same basis as the parent organization.

The bill also increases the maximum amounts for cash prizes and for merchandise used as prizes from $50,000 to $125,000.

Finally, the bill authorizes the raffle of real property with an appraised value of up to $500,000.

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

BACKGROUND:

The maximum limit for cash prizes was last changed in 2005. At that time the limit was increased from $10,000 to $50,000. The limit for merchandise used as a raffle prize has been set at $50,000 since 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 85

Short Title:	Increase Raffle Prize Limit.	(Public)
Sponsors:	Representatives Burr, Sager (Primary Sponsors); and Coates.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid by any nonprofit organization or association may not exceed ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000) in any calendar year."

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

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, March 18, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 119	Continue Rural Economic Transition Program.	Representative Crawford, Jr.
HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 402	No Elected Off. Recomm./Certain Co./Notaries.	Representative Martha B. Alexander

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:10 p.m. on **March 13, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE

Wednesday, March 18, 2009
1:00 P.M.
Room, 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor
HB 119	Continue Rural Economic Transition Program.	Rep. Crawford, Jr.
HB 274	Rewrite Foreign Money Judgments Laws.	Rep. Ross
HB 402	No Elected Off. Recomm./Certain Co./Notaries	Rep. Martha B. Alexander

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, March 18, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, March 18, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Goforth, Stewart, Wilkins, Vice Chairs; Representatives Allen, Allred, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Mills, Rapp, Samuelson, Steen, and Tarleton. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 119 – A BILL TO BE ENTITLED AN ACT TO STIMULATE JOB-CREATING VENTURES, EXPAND BUSINESS OPPORTUNITIES, AND PROMOTE ECONOMIC TRANSITION IN DISTRESSED RURAL AREAS.
Sponsor: Representative Crawford, Jr.
Representative Crawford presented the bill and said the bill came from the Rural Center and is the $20 million they used to work in Tier 1 counties to try to stimulate the economy. Representative Cole moved for a favorable report on HB 119 with a re-referral to the Committee on Appropriations. The motion passed.

HB 274 – A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.
Sponsor: Representative Ross
Representative Ross explained the bill. It is a re-write of the Foreign Money Judgment laws. The bill came through the Committee on Judiciary I unanimously and is a recommendation from the General Statutes Commission. The most important update is that the new law is being called the Foreign Country Money Judgment Act to distinguish it from a foreign judgment because in our law, a foreign judgment also involves a judgment from another state. This update is consistent with a uniform law.
Representative McGee moved for a favorable report on HB 274. The motion passed.

HB 402 – A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FOURTEEN THOUSAND NOTORIES PUBLIC.

Sponsor: Representative Martha B. Alexander

Representative Alexander presented the bill. She explained that currently in the law there is a requirement that an applicant who is applying to be a notary must obtain a recommendation from á public elected official except in counties where there are more than 15,000 active notaries. That applied to Wake and Mecklenburg Counties. This bill will reduce it to 14,000 which will still cover only Wake and Mecklenburg Counties. It will not be adding or taking away from any counties. The reason is that we do not quite have that number at the moment. The reason it came forth was the elected officials receive stacks of these, and in a county such as Mecklenburg, they do not always know the people coming forward, and meeting with them takes an inordinate amount of time. It is a relief to the elected officials in those counties. Representative Rapp moved for a favorable report of HB 402 with a re-referral to the Committee on Judiciary I. The motion passed.

The meeting adjourned at 1:20 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 18, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
H McLemore	NC Rural Center
Sharlini Sankaran	Science & Tech, NC Dept of Commerce
Kelli Kukura	NC League of Municipalities
D [illegible]	Electricities
Phyllis Owens	Fayetteville-Cumberland Co. Chamber
Patrick Woodie	NC Rural Center
Melody Adams	NC Rural Center
BILLY GUICLET	NC RURAL CENTER
Penny Griffin	School of Gov.
DANIEL BALM	K+L GATES
Joe Stewart	NC Chamber

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 18, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan St. Louis	The Center For Emerging Manufacturing Solutions
Paul Hoffman	THE Inform
Floyd M. Lewis	General Statutes Commission
P. Bly Hall	Ditto
John Goodman	NC CHAMBER
PJD	NCTA
Gregg Thompson	NFIB

House Pages

Name Of Committee: Commerce & Sm. Business Date: 3-18-09

1. Name: NAJIYYAH Phipps NA-gee-A
   County: Guilford
   Sponsor: REP WILEY
2. Name: DESHAWN Henry-Adams
   County: Guilford
   Sponsor: REP WILEY
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Charles Williams
2. Name: Ken Burroughs
3. Name: Tuscinat Agent
4. Name: Earl Coker
5. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 119 A BILL TO BE ENTITLED AN ACT TO STIMULATE JOB-CREATING VENTURES, EXPAND BUSINESS OPPORTUNITIES, AND PROMOTE ECONOMIC TRANSITION IN DISTRESSED RURAL AREAS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 119:
Continue Rural Economic Transition Program

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	**Date:**	March 18, 2009
Introduced by:	Rep. Crawford	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 119 would appropriate $20,000,000 for the 2009-2010 fiscal year to the North Carolina Rural Economic Development Center to be used to continue the Rural Economic Transition Program.***

BILL ANALYSIS: House Bill 119 would appropriate $20,000,000 for the 2009-2010 fiscal year to the North Carolina Rural Economic Development Center (Rural Center) to be used to continue the Rural Economic Transition Program. The bill provides that the Rural Economic Transition Program can continue to be funded for the following purposes:

- To provide grants for local governments for building re-use and restoration projects in buildings that have been vacant for three months that lead to job creation and/or business creation. Priority must be give to towns or communities with populations of less than 10,000.
- To provide grants to support economic recovery and revitalization in small towns through the NC STEP (Small Towns Economic Prosperity) program. Priority must be given to towns or communities with a population of less than 10,000 that are experiencing hardship as a result of business losses, devastation from natural disasters or persistent poverty.
- To provide grants for innovation projects involving local and regional economic development and agricultural diversification initiatives that help business activity, job creation, and public or private investment.

Priority for grant funds must be given to eligible applicants in development tier one areas. The Department of Commerce annually ranks the state's 100 counties based on economic well-being and assigns each a tier designation. The 40 most distressed counties are designated as tier one.

The bill would allow the Rural Center to use not more than 4% of the appropriated funds for administration of the programs that receive money under the act.

EFFECTIVE DATE: The bill would become effective July 1, 2009.

BACKGROUND: In the 2007 Appropriations Act (S.L. 2007-323, Section 13.14(b)), the General Assembly allocated $19,000,000 to authorize the Rural Center to establish and implement the Rural Economic Transition Program to "provide grants and equity investments to carry out transformative economic development and agricultural enhancement projects that will generate jobs and expand business activity". In 2008, the Rural Economic Transition Program was given a $4,000,000 appropriation from the General Assembly. S.L. 2008-107, Section 13.9.

According to the Rural Center, the NC STEP program has three primary goals: (i) to support economic recovery and revitalization in small towns adversely affected by structural changes in the economy or recent natural disasters; (ii) to test a comprehensive model of technical assistance and grantmaking to aid in revitalization efforts; and (iii) to provide information vital to the development of public policies that support long-term investment in the economic vitality of North Carolina's small towns.

H119-SMRQ-16(e1) v3

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HOUSE BILL 119

Short Title:	Continue Rural Economic Transition Program.	(Public)
Sponsors:	Representatives Crawford; Bryant, Faison, Tarleton, R. Warren, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations.	

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO STIMULATE JOB-CREATING VENTURES, EXPAND BUSINESS OPPORTUNITIES, AND PROMOTE ECONOMIC TRANSITION IN DISTRESSED RURAL AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the North Carolina Rural Economic Development Center, Inc., (Rural Center) the sum of twenty million dollars ($20,000,000) for the 2009-2010 fiscal year to be used to continue the Rural Economic Transition Program for the following purposes:

(1) To provide grants to local government for building reuse and restoration projects leading to job creation, business creation, or both in buildings that have been vacant for at least three months. Priority shall be given to towns or communities with a population of less than 10,000.

(2) To provide grants to support economic recovery and revitalization in small towns through the North Carolina STEP program. Priority shall be given to towns or communities with a population of less than 10,000 that are experiencing hardship as a result of business losses, devastation from natural disasters, or persistent poverty.

(3) To provide grants for innovation projects involving local and regional economic development and agricultural diversification initiatives that spur business activity, job creation, public or private investment, or any combination thereof.

SECTION 2. Priority for grant funds shall be given to eligible applicants in development tier one areas, as defined in G.S. 143B-437.08.

SECTION 3. The Rural Center may use a portion of the funds appropriated under this act, not to exceed four percent (4%), for administration of the programs for which funds are appropriated in this act.

SECTION 4. This act becomes effective July 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 274 A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION .

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 274*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Representatives Ross; and Lucas.	
Referred to:	Judiciary I, if favorable, Commerce, Small Business, and Entrepreneurship.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION .

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

HANDOUT #1

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
March 17, 2009

TO: House Committee on Commerce, Small Business, and Entrepreneurship
FROM: General Statutes Commission
RE: **House Bill 274 (Rewrite Foreign Money Judgments Laws)**

General Comments

This bill is based on the Uniform Foreign-Country Money Judgments Recognition Act (new Uniform Act) as approved in 2005 by the National Conference of Commissioners on Uniform State Laws. The new Uniform Act replaces the earlier Uniform Foreign Money Judgments Recognition Act (old Uniform Act), enacted in this State in 1993 as Article 18 of Chapter 1C of the General Statutes, G.S. 1C-1800 et seq. Like the old Uniform Act, the new Uniform Act provides a process for the recognition of money judgments rendered in other countries.

The new Uniform Act continues the basic policies and approach of the old Uniform Act but updates the old Uniform Act to clarify its provisions and correct problems created by judicial interpretations. The new Uniform Act:

- Updates and clarifies the definitions.
- Reorganizes and clarifies the scope provisions.
- Allocates the burden of proof.
- Establishes a procedure for seeking recognition or nonrecognition of a foreign-country money judgment.
- Clarifies and, to a limited extent, expands the grounds for denying recognition.
- Establishes a statute of limitations for recognizing foreign-country money judgments.

The bill also authorizes the printing of drafters comments and provides an effective date and applicability provision.

Specific Comments

Section 1 repeals Article 18 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign Money Judgments Recognition Act" (Article 18).

Section 2 enacts Article 20 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act" (new Article 20).

Section 1C-1850 provides that new Article 20 may be cited as the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act."

Section 1C-1851 defines new terms "foreign country" and "foreign-country judgment" to replace the current terms "foreign state" and "foreign judgment" in order to clarify that new Article 20 does not apply to recognition of sister-state judgments. The definition of "foreign country" is substantially similar to the definition of "foreign state." The definition of "foreign-country judgment" is based on the definition of "foreign judgment", except that the part of the definition setting out the scope of Article 18 has been moved to Section 1C-1852 of new Article 20.

Section 1C-1852 provides applicability provisions and a saving clause. Subsections (a) and (b), consistent with Article 18, provide that new Article 20 applies to a foreign-country judgment that grants or denies recovery of a sum of money and that is final, conclusive and enforceable under the law of the foreign country where it was rendered, unless the judgment (i) is for taxes, (ii) constitutes a fine or other penalty, or (iii) is for alimony, support, or maintenance in matrimonial or family matters. Subsection (c), which is new, places the burden of proof of showing that new Article 20 applies to a foreign-country judgment on the party seeking recognition. Subsection (d), like current G.S. 1C-1807, provides that new Article 20 does not prevent a court from applying common law principles of comity or other applicable law to recognize a foreign-country judgment to which the new Article 20 does not apply.

Section 1C-1853 provides standards for recognition and nonrecognition of foreign-country judgments. Subsections (f) through (i) are entirely new. Subsection (a) requires the court to recognize a foreign-country judgment to which new Article 20 applies, except as otherwise provided in the section. Subsection (b) states mandatory grounds for denying recognition that are essentially the same as under Article 18.

Subsection (c) states additional grounds for denying recognition. A court that finds that any of these grounds exist must deny recognition of a foreign-country money judgment unless the court determines as a matter of law that recognition would nevertheless be reasonable under the circumstances. Under Article 18, in contrast, denial of recognition on these grounds is discretionary. The additional grounds stated in subdivisions (c)(7) and (c)(8) are new. This section does not bring forward current G.S. 1C-1804(b)(7) (allowing a court to deny recognition of a foreign-money judgment if the court that rendered the judgment would not recognize a comparable judgment of this State).

Subsections (d) and (e) adopt a modified last-in-time rule for recognition of conflicting foreign-country money judgments. Assuming judgments that are otherwise entitled to recognition, subsection (d) requires the court to recognize the later judgment unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances, and subsection (e) requires the court to deny recognition of an earlier judgment unless the court determines that recognition would nevertheless be reasonable under the circumstances.

Subsections (f) through (h) allocate the burden of proof. Subsection (f) places on the party resisting recognition of a judgment under subsection (b) the burden of establishing that one of the mandatory grounds for nonrecognition exists. Subsection (g) similarly places on the party

resisting recognition under subsection (c) the burden of establishing that one of the additional grounds for nonrecognition exists. If such a ground is established, however, the party seeking recognition has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances. Subsection (h) places the burden on the party resisting recognition under either subsection (d) or (e) to establish that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. A party resisting recognition under subsection (d) also has the burden of showing that nonrecognition of the later judgment would be reasonable under the circumstances; a party seeking recognition under subsection (e) has the burden of establishing that recognition of an earlier judgment would be reasonable under the circumstances.

Subsection (i) requires a court, when ruling on recognition of a foreign-country judgment, to state the facts specially and state separately its conclusions of law. When the court is the trier of fact, the facts will be stated in the findings of fact. When the court is ruling on a motion to dismiss, where the nonmovant's factual allegations are treated as true, or a motion for summary judgment, where there is no issue of material fact, the court will need to set out those facts that the court considered to be material.

Section 1C-1854 lists in subsection (a) bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction over the defendant. These bases for personal jurisdiction are in substance the same as current law except that subdivision (a)(4) has been modified to include other forms of business organizations and subdivision (a)(7) is new. New subdivision (a)(7) provides that the foreign court has personal jurisdiction over the defendant if there was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Subsection (b) clarifies that the bases for personal jurisdiction listed in subsection (a) are not exclusive; a court of this State may find that the foreign court had personal jurisdiction over the defendant on some other basis.

Section 1C-1855 sets out the procedures by which the issue of recognition or nonrecognition of a foreign-country judgment may be raised. If recognition is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition. If recognition or nonrecognition is sought in some other action the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

Section 1C-1856 sets out the effect of recognition of a foreign-country judgment. A judgment recognized under new Article 20 is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive, but in contrast to Article 18, it is enforceable in the same manner and to the same extent as a judgment rendered in this State. Under Article 18, a judgment once recognized must be enforced under Article 17 of Chapter 1C of the General Statutes, which is cumbersome and partly duplicates the provisions of Article 18.

Section 1C-1857 is substantively the same as current law in providing that the court may stay any proceedings with regard to a foreign-country judgment pending appeal of the foreign-country judgment.

Section 1C-1858 is new. It expressly provides that an action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the judgment is effective in the foreign country or 10 years from the date that the judgment became effective in the foreign country.

Section 1C-1859 provides for uniformity of application and construction of new Article 20.

Sections 3 and 4, respectively, authorize the printing of drafters comments and provide that the bill is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 402 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FOURTEEN THOUSAND NOTARIES PUBLIC.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 402:
No Elected Off. Recomm./Certain Co./Notaries

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	March 17, 2009
Introduced by:	Rep. M. Alexander	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 402 amends the Notary Public Act to eliminate the requirement of an elected official recommendation for notary applicants in counties with more than 14,000 notaries on record.

[As introduced, this bill was identical to S268, as introduced by Sen. Clodfelter, which is currently in Senate Judiciary I.]

CURRENT LAW:

The current law includes a requirement that an applicant for qualification as a notary must obtain a recommendation from a publicly elected official in North Carolina, unless the applicant seeks to be commissioned in a county where more than 15,000 active notaries are on record as of the beginning of the calendar year when the application is filed.

BILL ANALYSIS:

House Bill 402 reduces the threshold number for avoiding the requirement of an elected official's recommendation from 15,000 to 14,000.

According to the Secretary of State's office, this provision currently only applies to Wake County. The amendment would make it also applicable to Mecklenburg County.

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

§ 10B-5. Qualifications.

...

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.
(2) Reside or have a regular place of work or business in this State.
(3) Reside legally in the United States.
(4) Speak, read, and write the English language.
(5) Possess a high school diploma or equivalent.
(6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

(7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.

(8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths.

(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed.

H402-SMRO-10(e1) v1

HOUSE BILL 402

Short Title:	No Elected Off. Recomm./Certain Co./Notaries.	(Public)
Sponsors:	Representative M. Alexander.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FOURTEEN THOUSAND NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-5(b)(9) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than ~~15,000~~14,000 active notaries public are on record on January 1 of the year when the application is filed."

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

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, March 25, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 212	Health Insurance Pool Pilot Program.	Representative Goforth Representative Fisher Representative Rapp Representative Whilden

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:40 a.m. on **March 19, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE

Wednesday, March 25, 2009
1:00 P.M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEM

Bill No.	Short Title	Sponsors
HB 212	Health Insurance Pool Pilot Program.	Rep. Goforth Rep. Fisher Rep. Rapp Rep. Whilden

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, March 25, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, March 25, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Goforth, Starnes, Stewart, Allred, Avila, Blackwell, Blackwood, Boles, Braxton, Cole, Farmer-Butterfield, Frye, Harrell, Holloway, McGee, Mills, Pierce, Rapp, Steen, Tarleton, Warren, Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. Ben Popkin, guest staff member also attended. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bill:

HB 212 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF HEALTH INSURANCE PILOT DEMONSTRATION PROJECTS IN INTERESTED COUNTIES TO PROVIDE A MODEL FOR AFFORDABLE EMPLOYER-BASED HEALTH INSURANCE.
Sponsor(s): Representatives Goforth, Fisher, Rapp, and Whilden
Representative Goforth presented the bill which came by way of the Committee on Insurance. He said the bill came out of the Buncombe County Chamber of Commerce as a result of round table discussions for approximately two years studying the opportunities of giving small businesses a better opportunity to take care of the uninsured and help with the rates. There are problems in the western part of the state with small companies that are not insuring any of their employees. This bill would be a great help in that regard. He recognized Laura Copeland, Vice President, Work Force Development and Policy, and Dr. John Ashley from Asheville who does volunteer work in that area. Ben Popkin explained the bill further and reminded Committee members that the Commissioner and the Department of Insurance have final approval authority for anything proposed. He answered questions from Committee members. Representative Goforth said the intent of the bill is to organize a pool that would allow 20-25 small businesses to get involved in insurance. It is a non-profit. Dr. John Ashley, Physician said the Chamber brought together the leaders of business, healthcare, and government in Buncombe County to define how this serious problem could be addressed six years ago. He answered questions from Committee members. Mr. John Friesen, Vice President of Underwriting and Legal Services, Blue Cross Blue Shield of North Carolina spoke to the Committee and advised that insurance pools generally do not work. He said that unless the voluntary pool is

priced at the same level as the small group market pool in existence, it will fail. He said that association groups have a short life span if membership is voluntary, and will create havoc for many small business owners and employees as their coverage changes several times from the start-up to the failure of the pool. Mr. Friesen answered questions from Committee members. Representative Cole moved for a favorable report of HB 212. The motion passed.

The meeting adjourned at 1:48 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 25, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leonard Cruz, MD	Hendersonville, NC
Jake Cashion	WS Chamber
Mark Fleming	BCBSNC
John Fraser	BCBSNC
Ken Wright	BCBSNC
LaTonya Hankins	LATTA
Joe Stewart	NC Chamber of Commerce
Kevin Massey	
Erin Schwabbauer	UNC
Jessie Dowell	JDALPA
Mike Smith	GSK

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 25, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jean Holliday	NCDOI
Rose Williams	NCDOI
Tony Moore	Individual
Roz Sawyer	NC Child Care Coalition
Chip Byrd	NCNB
Bruce Thompson	Parker Poe

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 25, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN GOODMAN	NC CHAMBER
ALLISON WALLER	Charlotte CHAMBER
Becki Gray	John Locke Foundation
Evelyn Hawthorne	ETSR
Kay Paksoy	BSW Intern, NASW-NC
	NMRS
Darnell Boyd	Rep. Adams
	MWC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship March 25, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gregg Thompson	NFIB
Daniel Bacon	K+L Gates
Daniel Ambrose	ElectriCities
Jordan Schrader	Asheville Citizen-Times
John Ashley	Asheville DC
Laura Copeland	Asheville
Sara Nevins	NC Department of Commerce
Bill Scobin	KLG
Robert Pasha	Young Moore
David Boag	MWC
Robert Tilson	NCHA

Rm. 1228

House Pages

Commerce, Small Business and
Name Of Committee: Entrepreneurship Date: 3-25-09

1. Name: Ethan Hollifield
   County: Mitchell
   Sponsor: Frye
2. Name: Levi Hollifield
   County: Mitchell
   Sponsor: Frye
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Charles Williams
2. Name: Rod Finger
3. Name: Frank Pacvo
4. Name:
5. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 212 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF HEALTH INSURANCE PILOT DEMONSTRATION PROJECTS IN INTERESTED COUNTIES TO PROVIDE A MODEL FOR AFFORDABLE EMPLOYER-BASED HEALTH INSURANCE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 212:
Health Insurance Pool Pilot Program

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	March 25, 2009
Introduced by:	Reps. Goforth, Fisher, Rapp, Whilden	**Prepared by:**	Ben Popkin
Analysis of:	Second Edition		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute to House Bill 212 would authorize the creation and operation of health insurance demonstration projects for large and small employers in the State and would direct project participants and the Department of Insurance to conduct post-project analyses of the impact of the projects on the cost and availability of health insurance in the project areas and the State as a whole.***

CURRENT LAW: The Small Employer Group Health Coverage Reform Act (Part 5 of Article 50 of Chapter 58 of the General Statutes) creates a health insurance pool for small employers (up to 50 employees) in the State. As of 2007, 43,000 employers (492,000 total covered lives) received coverage under provisions of the Act.

BILL ANALYSIS: The Proposed Committee Substitute to House Bill 212 would do the following:

Section 1 – Would authorize the establishment of demonstration projects with the goal of reducing the number of uninsured in the State and reducing the cost of health insurance for all health insurance purchasers in the demonstration project areas. Only insurers, medical service corporations, and HMOs licensed by the Department of Insurance to offer health insurance coverage in the State may participate as demonstration project sponsors, and the projects may operate between April 1, 2010 and December 31, 2014. Demonstration projects must allow all eligible employers to join a project pool, and all eligible interested employees of participating employers be included in the pool. Each demonstration project must offer the same benefit plans to all employers and employees in the pool.

Section 2 – Would allow demonstration projects to 1) use matching funds to subsidize premiums paid by employers and low-wage employees, and 2) offer a health benefits package with defined tiers of benefits and premium payment mechanisms.

Section 3 – Would exempt premium rates charged to participants in the demonstration project from the rating provision of the Small Employer Group Health Coverage Reform Act when the rates are based on a community rate for all employers participating in the project pool. Adjustments to premium rates may be allowed only for the following factors: benefit plan option chosen, family composition, age, and gender.

Section 4 – Would require approval by the Department of Insurance before establishing the demonstration project pool or contracting with an insurer. For approval to be given, the Department must determine that the pool satisfies the terms of Section 1 of this act, and that the group master contract, certificates of coverage, and premium rates satisfy all applicable requirements of Chapter 58 of the General Statutes.

Section 5(a) – Would direct each demonstration project sponsor to evaluate their project and submit a report to the Department of Insurance and the Joint Legislative Health Care Oversight Committee by February 1, 2014 and include a recommendation of whether the project should be extended, made permanent, or allowed to expire. This section would also direct the Department to evaluate the project, its impact on the overall insurance market, and recommend the project's continuation, permanence, or

expiration, and report to the Joint Legislative Health Care Oversight Committee by May 1, 2014. Finally, this section would allow for submission of interim reports by the Department or the project sponsors and would authorize the Commissioner to recommend early termination of the projects if continuation would not be in the public's interest.

Section 5(b) – Would specify that the Department's report would include analysis of the impact of the projects on small and large group insurance markets and consideration of the project's impact on: incurred loss rations, administrative costs, annual premiums, total number of covered groups and lives, and the age and gender composition of covered lives.

Section 5(c) – Would authorize the Department to adopt rules for the collection of data from insurers to conduct its analysis of project impact, and would provide that data collected should be the minimum necessary and not collected more frequently than on an annual basis.

Section 5(d) – Would identify specific issues to be addressed in the project sponsors' evaluations (impact on cost of care to all in the demonstration project communities, impact on number of uninsured in the project area, etc.).

EFFECTIVE DATE: This act is effective when it becomes law and expires December 31, 2014.

H212-SMRD-28(e2) v1

HOUSE BILL 212
Committee Substitute Favorable 3/16/09

Short Title: Health Insurance Pool Pilot Program. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF HEALTH INSURANCE PILOT DEMONSTRATION PROJECTS IN INTERESTED COUNTIES TO PROVIDE A MODEL FOR AFFORDABLE EMPLOYER-BASED HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law to the contrary, health insurance demonstration projects (Demonstration Projects) for large and small employers may be established by eligible sponsors (Eligible Demonstration Project Sponsors). Specific Demonstration Projects, the goal of which is to reduce the number of uninsured North Carolinians and to reduce the cost of health insurance for all purchasers of health insurance in the Demonstration Project areas, may begin not later than April 1, 2010, and may continue through December 31, 2014. Entities which are eligible under subdivisions (b)(1) or (b)(1a) of G.S. 58-51-80, subdivision (e) of G.S. 58-65-60, or subdivision (a) of G.S. 58-67-85, to have issued a policy of group health insurance are Eligible Demonstration Project Sponsors. A Demonstration Project must comply with the following:

(1) The products for any pooling of groups are fully insured by an insurer authorized to issue health insurance coverage in North Carolina.

(2) The insurance is issued through a group master contract with a bona fide association as defined in G.S. 58-68-25 or a trust or other legal entity that, pursuant to G.S. 58-51-80, 58-65-60, or 58-67-85, is capable of entering into a group master contract.

(3) The pooling arrangement requires that all small employers desiring to join and meeting the eligibility requirements for the group be accepted and that all eligible employees of each employer who elect coverage through the participating employers be included in the pool.

(4) Each employer participating in the pooling arrangement and its employees are offered the same benefit plans.

SECTION 2. A Demonstration Project authorized under Section 1 of this act may contain the following components:

(1) Use of matching funds from State, federal, and private sources to subsidize private health insurance premiums paid by eligible small employers and low-wage employees participating in the Demonstration Project.

(2) Offering of a health benefits package with defined tiers of benefits and premium payment mechanisms as optional alternatives to the standard large group health benefits package to be applied to eligible small employers in achieving affordable health insurance premiums for employees and employers.

SECTION 3. The premium rates charged to individuals covered under employers participating in the group master contract are not subject to G.S. 58-50-130(b) when the rates are based on a community rate that reflects the experience of all the employers participating in the pool. Such community rate may be adjusted in order to determine premiums for each employee based only on the following factors: the benefit plan option selected by the participating employer or individual employee, family composition, age, and gender.

SECTION 4. The large risk pool authorized in this act shall not be established, and a group master insurance contract shall not be executed with an insurer unless and until reviewed and approved by the Department of Insurance. Department approval shall be given if the Department determines that the pool satisfies the requirement of Section 1 of this act and that the group master contract, certificates of coverage, and premium rates of the insurer desiring to issue the coverage satisfy all applicable requirements of Chapter 58 of the General Statutes.

SECTION 5.(a) The Demonstration Project Sponsor of each Demonstration Project shall prepare an evaluation of their Demonstration Project. A report on each evaluation shall be submitted to the Department of Insurance and to the Joint Legislative Health Care Oversight Committee not later than February 1, 2014. The reports shall include a recommendation as to whether the Demonstration Project authority should be extended, made permanent, or expire on its scheduled expiration date. The Department of Insurance shall evaluate the Demonstration Project authority, taking into account the impact that the Demonstration Projects have on the overall insurance market. A report on the Department's evaluation shall be submitted to the Joint Legislative Health Care Oversight Committee not later than May 1, 2014. The report shall include a recommendation as to whether the Demonstration Project authority should be extended, made permanent, or expire on its scheduled expiration date.

The Department of Insurance and the Demonstration Project Sponsors may submit interim reports to the Joint Legislative Health Care Oversight Committee. If the Commissioner of Insurance determines that a specific Demonstration Project or the Demonstration Project authority is not in the public's interest or is detrimental to the small group or large group health insurance markets, the Commissioner may recommend early termination of a specific Demonstration Project or the Demonstration Project authority to the Joint Legislative Health Care Oversight Committee.

SECTION 5.(b) The evaluation performed by the Department of Insurance shall analyze the impact that the Demonstration Projects have on the small and large group insurance markets, both statewide and in the demonstration areas. The analysis shall include, but not be limited to, consideration of the impact that the Demonstration Projects have had on the following:

(1) Incurred loss ratios.
(2) Administrative costs.
(3) Annual premiums.
(4) Total number of covered groups and covered lives.
(5) Age and gender composition of covered lives.

SECTION 5.(c) The Department of Insurance may adopt rules concerning the collection of pertinent data from all insurers covering small and large employer groups in the State, whether through a Demonstration Project or through the traditional small and large group markets, to conduct the evaluation authorized by this act. Data collected pursuant to this section shall be the minimum that the Department deems necessary to perform its evaluation, and data collection shall not occur more frequently than on an annual basis during the life of the Demonstration Project authority.

SECTION 5.(d) The evaluation performed by each Demonstration Project Sponsor shall address the following:

(1) The impact on the number of uninsured persons in the Demonstration Project area and the cost and source of their care.

(2) The impact of any unique, local structures for disease management and health promotion on the health and costs for enrollees through small employers.

(3) Approaches to achieve prudent and appropriate use of high technology health care resources to the population enrolled in the Demonstration Project among large and small employers.

(4) Integration of primary care for the increased insured population with the ongoing programs of care for the remaining uninsured to enhance access to care and improve quality and continuity of care.

(5) The impact on the cost of care to uninsured and insured populations in the Demonstration Project communities.

SECTION 6. This act is effective when it becomes law and expires December 31, 2014.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, April 1, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 323	Prevent the Theft of Scrap Metals.	Representative Gulley Representative Tillis
SB 114	Exempt Some Church Facility LU/LA Elevators.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:35 a.m.on **March 30, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE

Wednesday, April 1, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEM

Bill No.	Short Title	Sponsors
HB 323	Prevent the Theft of Scrap Metals	Representative Gulley Representative Tillis
SB 114	Exempt Some Church Facility LU/LA Elevators	Senator Hoyle

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, April 1, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, April 1, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Goforth, Stewart, Vice Chairs; Representatives Allred, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Harrell, Holloway, McGee, Mills, Rapp, Samuelson, and Tarleton. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 114 - A BILL TO BE ENTITLED AN ACT EXEMPTING PLACES OF WORSHIP OWNED AND OPERATED BY RELIGIOUS INSTITUTIONS FROM CERTAIN PROVISIONS OF THE NORTH CAROLINA STATE BUILDING CODE RELATING TO LIMITED USE AND LIMITED ACCESS ELEVATORS AND TO REQUIRE THE ADOPTION OF RULES UNDER THE ELEVATOR SAFETY ACT OF NORTH CAROLINA PROVIDING FOR THE PROMINENT DISPLAY OF IDENTIFYING NUMBERS IN ELEVATORS TO FACILITATE THE EXTRICATION OF PASSENGERS FROM MALFUNCTIONING ELEVATORS.
Sponsor: Senator Hoyle
Senator Hoyle presented the bill to the Committee and said there was no known opposition to it. He said the Department of Insurance was in agreement. There are others who looked at the bill when it was in the Senate, and he knew of no opposition to it. Discussion followed. Representative Carney moved for a favorable report to SB 114 with a re-referral to the Committee on Judiciary II. The motion passed.

HB 323 - A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY.
Sponsor(s): Representative Gulley and Representative Tillis
Representatives Gulley and Tillis presented the bill. Representative Gulley said this was a significant problem in his county. Whole air-conditioners and equipment were being

stolen. Construction stopped because materials had been stolen. This bill addresses a number of ways to fix the problem. Representative Dickson said that she had discussed the bill with the bill sponsors, and they agree there is more work to be done on it; therefore, she will select a subcommittee to continue working on the bill. However, she did want to give the bill sponsors an opportunity to present the bill to the Committee and allow others who had traveled a good distance to hear it. Representative Tillis told of many instances in which metals were stolen in Mecklenburg County. When he first heard of the bill, it was a request by the Mecklenburg County delegation, but for various reasons it was proposed as a public bill. He said the purpose of the bill was to try and provide more data that law enforcement officers can use to actually find offenders, track them down, and prosecute them for their crimes. Representative Tillis answered questions from Committee members. Major Andy Leonard, Charlotte-Mecklenburg Police Department spoke to the Committee and explained they had dealt with reputable dealers since the last bill was passed into law. If the dealers know what is brought to them that the seller has no business of possessing, then the dealer will notify the police. There are other dealers who are not as diligent in helping them. He said this is a statewide and national problem. Discussion followed. The Chair told Committee members that she would appoint a subcommittee and notify them via e-mail and asked that if anyone had a particular interest in serving on the subcommittee to contact her.

The meeting adjourned at 1:36 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship April 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Haigwood	NCDOL
John Hannan	NCDOL
Jonathan Brooks	NCDOL
Allison Waller	Charlotte Chamber
John Goodman	NC Chamber
Richard Thompson	Dominion
VLM²Bride	NCTA
Joanne Stevens	nursing
Catherine Moore	UNCG MSN Student
TINA GORDON	NC Nurses Assoc

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship April 1, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Geisler	Charlotte Mecklenburg Police Dept 601 E Trade St. Charlotte NC 28202
Andy Leonard	Charlotte-Meck. Police 601 E. Trade St. Char; NC 28202
Boyd Cauble	City of Charlotte
Kim Hibbard	NCLM
Thomas Moore	Education Lobby
Julia Leggett	The Arc of NC
Jennifer Mahan	MHANC
	MISC
Will Culpepper	Moore + Van Allen
L. Andrews	NCFB
Art Britt	NCDOL

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship April 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC Bev A
Lisa Martin	NC Home Builders
Hoyang Hartsoy	NCBA
Rick Zechini	NC Assn. of Realtors
DAVID BARNES	Pepsi Spirits
Sandy Sands	WCSR
Steven Vollenweider	Nationwide
Dean Plunkett	NCBWWA
Joe Stewart	NC Chamber

Rm 1228
LT 06

House Pages

Commerce, Sm. Business &
Name Of Committee: Entrepreneurship Date: 4-1-09

1. Name: Donice Bynum
   County: Nash
   Sponsor: Rep. Angela Bryant
2. Name: Emmanuel Reid
   County: Winston Salem / Forsyth
   Sponsor: Larry Womble
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: EARL COKER
2. Name: CHARLES WILLIAMS
3. Name: FRANK PREVO
4. Name: _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 114 A BILL TO BE ENTITLED AN ACT EXEMPTING PLACES OF WORSHIP OWNED AND OPERATED BY RELIGIOUS INSTITUTIONS FROM CERTAIN PROVISIONS OF THE NORTH CAROLINA STATE BUILDING CODE RELATING TO LIMITED USE AND LIMITED ACCESS ELEVATORS AND TO REQUIRE THE ADOPTION OF RULES UNDER THE ELEVATOR SAFETY ACT OF NORTH CAROLINA PROVIDING FOR THE PROMINENT DISPLAY OF IDENTIFYING NUMBERS IN ELEVATORS TO FACILITATE THE EXTRICATION OF PASSENGERS FROM MALFUNCTIONING ELEVATORS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 114:
Exempt Some Church Facility LU/LA Elevators

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	April 1, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 114 adds a new subsection to G.S. 143-138, North Carolina State Building Code (Code), to exempt from the Code the installation and maintenance of limited use or limited access hydraulic elevators in a place of worship having less than 1,000 members to be served by the building or facility. The bill also requires the Commissioner of Labor to adopt rules that require buildings that have more than one elevator to post a number in the elevator that identifies the elevator in case of malfunction of the elevator in order to help extricate passengers.

CURRENT LAW: The North Carolina Building Code Council has the authority to prepare and adopt the Code. The Code can include reasonable classifications of buildings and structures, including places of worship, and rules for a variety of items within buildings and structures including elevators. The federal Americans With Disabilities Act (ADA) has regulations governing the nondiscrimination on the basis of disability in commercial buildings. However, the ADA's provisions exempt religious organizations or entities controlled by religious organizations, including places of worship and only state building codes apply for places of worship.

BILL ANALYSIS: Senate Bill 114 would exempt from the Code the installation and maintenance of limited use or limited access hydraulic elevators in a place of worship that has less than 1,000 members in the body of worshipers to be served by the building. The bill defines a "place of worship" as a building or facility owned or operated by a religious organization and used primarily for religious rituals or religious observance. A nonreligious entity that leases space from a religious organization is not exempt under the new subsection.

Any applicable safety inspection requirements by the Department of Labor are not affected by this bill. The bill provides that a local government may not adopt any ordinance in conflict with or limiting the exemption as created by the bill.

The bill also requires the Commissioner of Labor to adopt rules to require, in any building that has more than one elevator, the posting of a distinct number in the passenger cabin of each elevator for the purpose of identification of the elevator. The purpose of this identification of each elevator is to facilitate extrication of passengers from any elevator that malfunctions while occupied.

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

BACKGROUND: The American Society of Mechanical Engineers (ASME) defines a limited-use or limited-access application elevator as a power passenger elevator in which the use and application is limited by size, capacity, speed, and rise. A hydraulic elevator is a power elevator in which the energy is applied, by means of a liquid under pressure, in a hydraulic jack.

S114-SMRQ-21(e2) v2

Tim Hovis, Counsel to Senate Commerce, significantly contributed to this summary.

SENATE BILL 114
Commerce Committee Substitute Adopted 3/10/09

Short Title: Exempt Some Church Facility LU/LA Elevators. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT EXEMPTING PLACES OF WORSHIP OWNED AND OPERATED BY RELIGIOUS INSTITUTIONS FROM CERTAIN PROVISIONS OF THE NORTH CAROLINA STATE BUILDING CODE RELATING TO LIMITED USE AND LIMITED ACCESS ELEVATORS AND TO REQUIRE THE ADOPTION OF RULES UNDER THE ELEVATOR SAFETY ACT OF NORTH CAROLINA PROVIDING FOR THE PROMINENT DISPLAY OF IDENTIFYING NUMBERS IN ELEVATORS TO FACILITATE THE EXTRICATION OF PASSENGERS FROM MALFUNCTIONING ELEVATORS.

The General Assembly of North Carolina enacts:

SECTION 1. Findings. – The General Assembly finds that:

(1) The Americans With Disabilities Act (ADA) was enacted by Congress to provide that buildings afford physical access to all persons, including those with physical disabilities and limitations.

(2) The section of the ADA directly related to church facilities exempts "religious organizations or entities controlled by religious organizations, including places of worship." 42 U.S.C. § 12187.

(3) In some instances, churches face multiple and confusing accessibility standards required by local, State, and federal rules and guidelines and places of worship, especially smaller churches, mosques, synagogues, temples, and other similar bodies of worship, when under hardship, should be relieved of the burden of coverage under certain accessibility requirements of the ADA to the extent the coverage is not required by federal law.

(4) The State's policy of covering religious organizations under its accessibility laws and guidelines will not be subverted by allowing a limited exception for small congregations seeking to utilize otherwise safe limited use and limited access hydraulic elevators.

SECTION 2.(a) G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and

structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

~~The~~ Except as provided by subsection (c1) of this section, the Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 2.(b) G.S. 143-138 is amended by adding a new subsection to read:

"(c1) Place of Worship Exemption. – The North Carolina State Building Code and the standards under this Article do not apply to the installation and maintenance of limited use or

limited access hydraulic elevators in a place of worship having less than 1,000 members in the body of worshipers to be served by the building or facility. For the purposes of this section, a 'place of worship' is a building or facility owned and operated by a religious organization and used primarily for religious rituals or religious observance. A nonreligious entity that leases space from a religious organization is not exempt under this subsection."

SECTION 2.(c) G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. – ~~The~~ Except as otherwise provided in this section, the North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

A local government may not adopt any ordinance in conflict with the exemption for places of worship provided by subsection (c1) of this section. No local ordinance or regulation shall be construed to limit the exception provided by subsection (c1) of this section."

SECTION 3. Nothing in this act shall be construed to limit the authority of the North Carolina Department of Labor to perform safety inspections of hydraulic elevators.

SECTION 4. The Commissioner of Labor shall adopt rules pursuant to Article 14A of Chapter 95 of the General Statutes (Elevator Act of North Carolina) to require, in any building or structure having more than one elevator, the posting of a distinct number in plain view in the passenger cabin of each elevator for the purpose of identification of the elevator to facilitate extrication from any elevator that malfunctions while occupied.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 323:
Prevent the Theft of Scrap Metals

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	April 1, 2009
Introduced by:	Reps. Gulley, Tillis	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 323 amends the law relating to secondary metals recyclers to add a requirement that the recycler issue a receipt containing the fingerprint of the person selling the metals. The bill also prohibits all cash transactions and requires that a check or money order be mailed to the seller. The bill creates a list of items a recycler may not purchase unless the recycler has written documentation that the seller is the owner of the metals.***

[As introduced, this bill was identical to S729, as introduced by Sen. Rucho, which is currently in Senate Judiciary I.]

CURRENT LAW:

In 2007, the law relating to secondary metals recyclers was amended to curtail the theft of metals. The law increased the record keeping requirements for secondary metals recyclers when purchasing certain metals to include:

- The physical address where regulated metals were obtained by the seller, and a statement signed by the seller certifying the lawful right to sell and dispose of the property.
- The license number of the vehicle used to deliver the regulated metals property.
- A photo or scan of the driver's license or state or federally issued photo identification card of the person delivering the regulated metals property. If the delivery person does not have valid photo identification, the transaction cannot be completed.

The law also added a requirement that the recycler make receipts of sales available at the end of each day if requested by local law enforcement. The penalty for second and subsequent violations of the law was increased to a Class I felony.

The law was also amended to add wireless and cable communications fixtures and equipment to the law creating criminal penalties for the willful injury or destruction of wires and fixtures of telephone, telegraph, and electric power lines. The penalty was increased from a Class 1 misdemeanor to a Class I felony.

Finally, the law created a new section to provide for the forfeiture of vehicles used to transport unlawfully obtained metals property, with certain exceptions.

BILL ANALYSIS:

House Bill 323 requires that secondary metals recyclers must:

- Issue a receipt to the person selling the regulated metals which is signed by both parties and contains the fingerprint of the seller.
- Retain a clear and legible copy of the receipt or the original.

- Provide receipts electronically if requested by the law enforcement agency.

A secondary metals recycler may not do the following:

- Purchase regulated metals for cash. The payment by check or money order must be mailed to the address of the seller.
- Purchase certain metals property, unless the recycler has written documentation that the seller is the owner of the property. This includes metals from telephone, cable, electric, water or other public utilities.

If any person notifies the recycler of the theft of specific regulated metals, the recycler must notify law enforcement if the recycler is offered or purchases metals fitting the description of the stolen property within 90 days of receiving notice.

The entire section is made inapplicable to purchases of only beverage containers.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to purchases and offers of purchase that occur on or after that date.

H323-SMRO-20(e1) v1

HOUSE BILL 323

Short Title:	Prevent the Theft of Scrap Metals.	(Public)
Sponsors:	Representatives Gulley, Tillis (Primary Sponsors); K. Alexander, M. Alexander, Cotham, Hurley, Johnson, Justus, Killian, Lucas, Neumann, Starnes, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III.	

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY:

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"**§ 66-11. Dealing in regulated metals property; penalties.**

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

(4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(a1) Receipt Required. – A secondary metals recycler shall issue a receipt to the person delivering the regulated metals property for all purchase transactions in which the secondary metals recycler purchases regulated metals property. This receipt shall be signed by both the person receiving the materials and the person delivering the materials. The person delivering

the materials shall place next to that person's signature on the receipt a clear impression of that person's index finger that is in ink and free of any smearing.

(b) Records Required. –

(1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

a. The name and address of the secondary metals recycler.

b. The name, initials, or other identification of the individual entering the information.

c. The date of the transaction.

d. The weight of the regulated metals property purchased.

e. The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.

f. The amount of consideration given for the regulated metals property.

g. The name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals.

h. A photocopy or electronic scan of the drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or a state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.

i. A copy of the receipt required under subsection (a1) of this section when all the information required under subsection (a1) of this section is clear and legible, or in the event the copy of the receipt is not clear or not legible, the original receipt.

j. If required under subdivision (3) of subsection (d) of this section, the written documentation showing ownership of the regulated metals property.

(3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property.

(c) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect ~~either~~ all of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under subsection (b) of this section.

A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located. The sheriff or the chief of police may request these receipts to be electronically transferred directly to the law enforcement agency.

(d) Purchase Limitations. – No secondary metals recycler shall do any of the following:

(1) Purchase regulated metals property for ~~cash consideration from other than a fixed location.~~any consideration other than check or money order that is mailed to the address of the seller.

(2) Purchase or receive regulated metals property from minors from other than a fixed location, provided that this provision does not apply to the purchase of aluminum in the form of ~~beverage or~~ food cans.

(3) Purchase any of the following regulated metals property, unless written documentation is provided to the secondary metals recycler that shows to the satisfaction of that recycler that the seller is the owner of the regulated metals property or is an employee, agent, or other person authorized to sell the property on behalf of the owner:

a. Any catalytic converter.

b. Any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer.

c. Any utility access cover.

d. Any street light pole or fixture.

e. Any road or bridge guard rail.

f. Any highway or street sign.

g. Any water meter cover.

h. Any metal beer keg, including any made of stainless steel that is clearly marked as being the property of the beer manufacturer.

i. Any traffic directional or control sign.

j. Any traffic light signal.

k. Any regulated metal marked with the name of a government entity.

l. Any property owned by a telephone, cable, electric, water, or other public utility, or owned by a railroad, and marked or otherwise identified as such.

m. Any unused and undamaged building construction or utility material consisting of copper, pipe, tubing, or wiring, any aluminum wire, any historical marker, or any grave marker or burial vase.

n. Any air conditioner evaporator coil or condenser, in whole or in part.

(d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain any regulated metals product, except for iron and steel products, for seven days from the date of purchase before selling, dismantling, defacing, or in any manner altering or disposing of the regulated metals property.

(e) Right to Restitution. – The court may order a defendant to make restitution to the secondary metals recycler for any damage or loss caused by the defendant arising out of an offense committed by the defendant.

(e1) Theft Notification to Recycler. – Any person may notify a secondary metals recycler of regulated metals property of a known or presumed theft of regulated metals

products by providing any information concerning the theft that is available to that person, including any one or more of the following:

(1) The approximate quantity and size of the regulated metals products stolen.

(2) The geographical area from which the regulated metals products were reported missing or presumed stolen.

(3) Any specific distinguishing marks on or in the regulated metals products or any other method of identifying the regulated metals products.

(e2) Theft Notification to Law Enforcement. – If any regulated metals products meeting the description in the notice under subsection (e1) of this section are purchased by the secondary metals recycler or offered for sale to the secondary metals recycler within 90 days of the recycler receiving this notice, the secondary metals recycler shall notify the local police or sheriff that the regulated metals products were purchased by or offered for sale to the recycler.

(f) Violations. – Unless the conduct is covered by some other provision of law providing greater punishment, any person knowingly and willfully violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this section is a Class I felony.

(g) Exemptions. – This section shall not apply to purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business. This section does not apply to purchases of regulated metals property that involve only beverage containers.

(h) Preemption. – A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this section, and this law preempts all existing laws, ordinances, or regulations."

SECTION 2. This act becomes effective October 1, 2009, and applies to purchases and offers of purchase that occur on or after that date.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, April 8, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

There will be two presentations from:

Dan St. Louis, Director, Center for Emerging Manufacturing Solutions

Scott D. Dorney, Executive Director, North Carolina Military Business Center

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:45 p.m. on **April 06, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE

Wednesday, April 8, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEM

Presentations

- Dan St. Louis, Director, Center for Emerging Manufacturing Solutions
- Scott D. Dorney, Executive Director, North Carolina Military Business Center

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, April 8, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, April 8, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representative Goforth, Vice Chair; Representatives Avila, Blackwell, Blackwood, Boles, Cole, Floyd, Frye, Harrell, McGee, Samuelson, Tarleton, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

Representative Dickson said since this is the Committee on Commerce, Small Business and Entrepreneurship that from time to time we do like to talk about what is going on in these areas across our state. She told Committee members there would be two presentations given and introduced the guest speakers as follows:

Dan St. Louis, Director, Center for Emerging Manufacturing Solutions (CEMS) was a guest speaker at the suggestion of Representative Avila. CEMS is a new undertaking at Catawba Community College and is ready to move companies forward. Mr. St. Louis said that he did not feel manufacturing is dead in North Carolina even with all of the foreign competition. In manufacturing there is printing, logistics, etc. At CEMS, experienced industry personnel are ready to:

- Enhance and improve products through research and development
- Assist in creating prototypes for new, innovative offerings
- Analyze new materials to enhance structure and programs
- Test products for reliable content and quality
- Train personnel for lean manufacturing processes and supply chain efficiencies
- Provide forum for rollout of new 21st century technologies
- Provide hands-on guidance for international marketing and sales

Mr. St. Louis distributed products to Committee members for them to feel and told how closely they worked with the Department of Commerce to export them. Discussion followed.

Scott D. Dorney, Executive Director, North Carolina Military Business Center (NCMBC) in Fayetteville was invited by the Chair to be a guest speaker. NCMBC is also a program of the Community College System which began at Fayetteville Technical Community College. Mr. Dorney provided a handout. He said there are 12 locations in the NCMBC which cover the entire state. Their focus is job creation that represents opportunities. He said the Department of Commerce did a study last year to show the impact of the military in North Carolina which is $23.4 billion every year. The Department of Defense does approximately $3 billion of procurement in North Carolina—buying goods and services in the state. NCMBC is an outgrowth of the vision of the General Assembly in creating and seeing opportunities in sales to the military and to the federal government. Discussion followed.

Representative Dickson thanked each speaker for their presentations.

The meeting adjourned at 1: 46 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurhsip April 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Nienow	Dept. of Commerce
Sharon Miller	CUCA
Paul Fogleman	[illegible]
Daniel Auburn	Electricities
David Barnes	Poyner + Spruill
John Goodman	NC Chamber
Joe Stewart	NC Chamber
Lisa Martin	NC Home Builders
Edward Rubio	American Craft Smith, Inc

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurhsip April 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Hunton & Williams
Mallory Hatcher	MWC
Bruce Thompson	NFIB
Carmen Hardy	Electric Co-ops of AL

Rm. 1228
LT 06

House Pages

COMMERCE, SM. BUSINESS & ENTREPRENEURSHIP

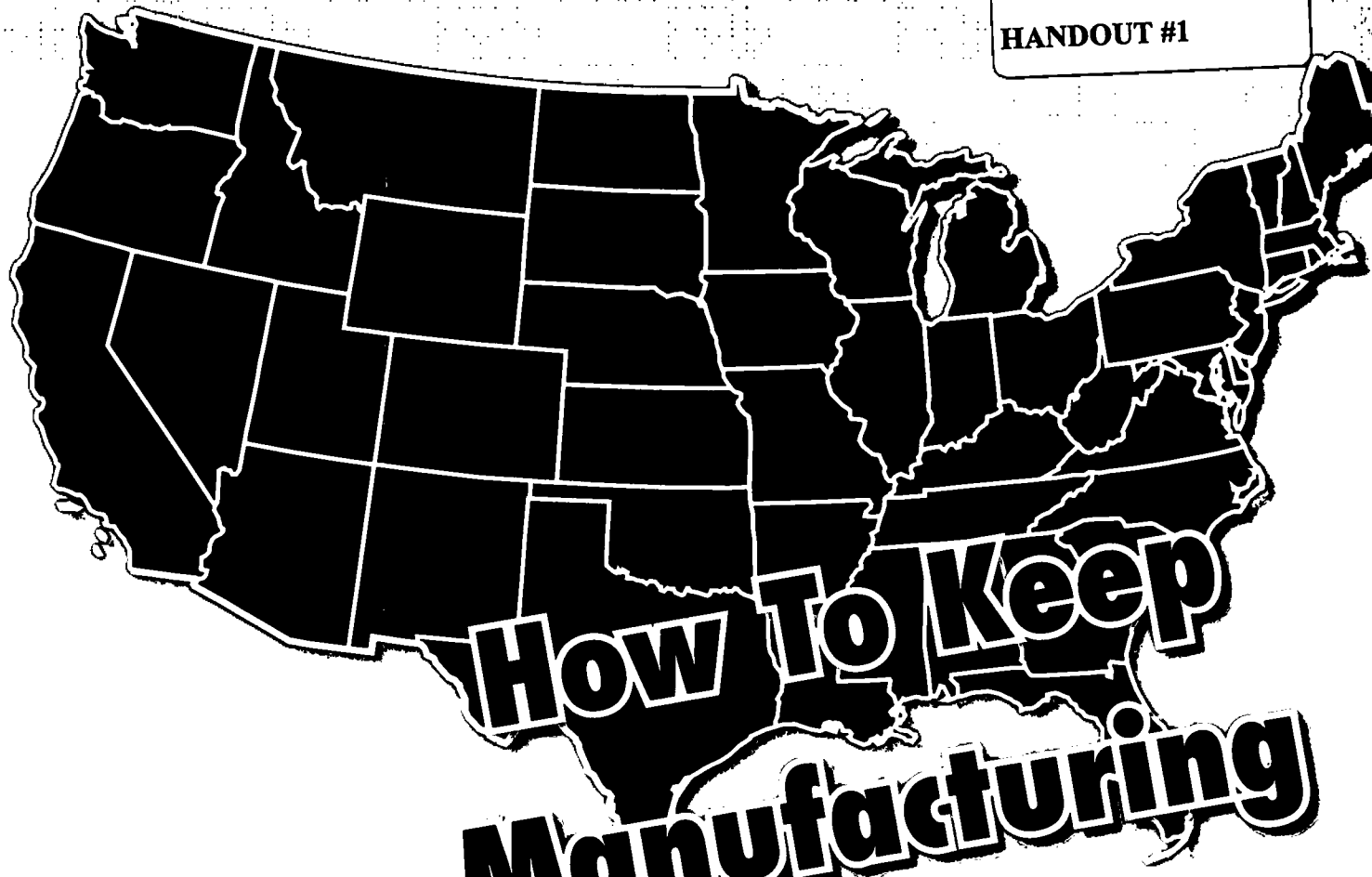
Name Of Committee: _____ Date: 4-8-09

1. Name: Caroline Stephenson
   County: Wake
   Sponsor: Tolson
2. Name: James Collier
   County: Craston
   Sponsor: Newman
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: DAVE SHEARON
2. Name: EARL COKER
3. Name: FRANK PREVO
4. Name: _____

HANDOUT #1



How To Keep Manufacturing In America.

CEMS
CENTER FOR EMERGING MANUFACTURING SOLUTIONS
Testing • Product Development • Market Innovations • Research • Lean Manufacturing

Catawba Valley Community College
2760 Highway 70 SE
Hickory, NC 28602
(828) 327-7000
www.legsource.com www.hosetech.com

CEMS
CENTER FOR EMERGING MANUFACTURING SOLUTIONS
Testing • Product Development • Market Innovations • Research • Lean Manufacturing

THE SOLUTION STARTS WITH US.

Manufacturing, once the backbone of the American economy, has shrunk. Other parts of the world with lower labor costs, fewer regulations, and stronger support services have attracted production once based in the U.S.

Some manufacturing is *thriving.* Companies with superior products and savvy marketing strategies are growing. Innovative concepts are put through research and development processes. Prototypes are *tested.* Manufacturing processes are fine-tuned to wring out costs.

The result is a value-added product that is competitive in a world marketplace.

The **Center for Emerging Manufacturing Solutions (CEMS)** is a new undertaking at Catawba Valley Community College. Building on solid experience in outreach to traditional manufacturing, CEMS is prepared to move companies forward. Experienced industry personnel are ready to:

- Enhance and improve products through research and development.
- Assist in creating prototypes for new, innovative offerings.
- Analyze new materials to enhance structure and programs.
- Test products for reliable content and quality.
- Train personnel for lean manufacturing processes and supply chain efficiencies.
- Provide forum for rollout of new 21st century technologies.
- Provide hands-on guidance for international marketing and sales.

Hosiery, foodservice, furniture, packaging and textiles are among the traditional industries that have built the economy of our region. The core of these industries are alive and well today and can be tomorrow.

CEMS is the vision for a 21st century economy that builds on strengths...strengths of America's manufacturing successes.

ncmbc

North Carolina Military Business Center

April 8, 2009

NORTH CAROLINA MILITARY BUSINESS CENTER

★ ★ ★ ★ ★

ncmbc

North Carolina Military Business Center

- Mission: To leverage military and other federal business opportunities for economic development and quality of life in NC
- Goals:
  - Increase military business for NC companies
  - Integrate military/families into workforce
  - Support defense-related recruitment

ncmbc

Business Development Team

- Create awareness of opportunities, recruit NC firms
- Identify current opportunities, notify NC firms
- Assist firms with solicitations, quotes, proposals
- Pre-position, develop sub-contract opportunities

CY2009	33 Contracts	$190.7 - $890.3 million
CY2005-2009	610 Contracts	$1.259 - $2.880 billion

As of: 7 APR 2009

ncmbc

MatchForce

- Matches businesses to military opportunities
- Matches primes to NC sub-contractors
- Matches businesses to NC job seekers
- Businesses won >$518 million, 2006-09 contracts
- Currently on MatchForce:

13,161 NC Businesses	28,212 Individuals
7,365 Contract Opportunities	3,739 Job Opportunities

As of: 7 APR 2009

ncmbc

Priority Initiatives 2008-2009

- Military construction ($5-7 billion) program
- Military Sustainment: Aerospace Alliance, reverse engineering, defense machining
- Subcontracting program: with major primes
- Emerging opportunities program (services)
- Recruitment: defense prime contractors
- Workforce initiatives (StayNC, I Hire Military)
- Leverage base growth opportunities

ncmbc

Performance Outcomes

- Contracts sourced to NC businesses: 7,700 (12/31/08)
- Connections made to NC businesses: 1.1 million (12/31/08)
- Contracts won by NC businesses: 610 (4/7/09)
- Value of contracts won: $1.25 - $2.88 billion
- Expenditures by NCMBC, 2005-2009: $4.5 million
- ROI (contract value to expenditures by NCMBC): 270:1
- Corporate income tax on contracts won: $86 million
- ROI (corporate income tax to tax revenue expenditures): 19:1
- Jobs created/retained ($30,000 per job): up to 41,000
- Total awards to NC small businesses*: up 98%, $0.9b to $1.7b
- Total contract awards to NC businesses*: up 46%, $2.8b to$4.1b

(*during lifetime of NCMBC, 2005-2008)

Soldiers Wearing N.C. Socks

Hosiery Industry Cashing In On Military Contracts

As foreign competition continues to confront the domestic hosiery industry, the U.S. Military is helping to keep hosiery machines running in North Carolina.

North Carolina manufacturers are making all the standard-issue socks for all branches of the service, according to Dean Allred of the Hosiery Technology Center in Asheboro, N.C. They also make other socks for the military as well as ones sold in the military exchange stores.

Apparel and textile manufacturers around the state are making products for the military, but the hosiery industry alone is bringing in millions of dollars from government contracts. Although there were no statistics available of the exact amount of money the contracts are bringing in, Dan St. Louis of the Hosiery Technology Center in Hickory, N.C. says, "It is multi-millions of dollars."

Foreign-made socks are no competition for domestic manufacturers when it comes to socks issued to members of the military. The law requires that any item used for military uniforms has to be 100 percent made in the United States. Thanks to the Berry Amendment, that includes the raw materials used in them. It does not include items sold in military exchange stores.

While only a handful of N.C. hosiery manufacturers now hold government contracts, the playing field is broadening as more attempt to take a piece of the military pie. The Hosiery Technology Center is working in conjunction with Teresa Bouchonnet of the N.C. Military Business Center to help companies bid for government contracts, both military and other government business.

Allred, who is over government procurement for the Hosiery Technology Center, monitors state, federal and local government procurement and posts opportunities for manufacturers on the Hosiery Technology Center's Legsource website. He also emails the information to a manufacturing database. Allred works with Bouchonnet to help interested manufacturers bid on government contracts. Bouchonnet is a technical expert on military contracts.

"I help manufacturers find bids and help them with the technical part. I help them with all the steps from registering to bidding on government contracts. And, once they get the contract, I help them with any issues that come up," explains Bouchonnet who works with textiles, apparel and hosiery companies. "I match companies up so they have a stronger chance of winning contracts. It is not that easy to make government bids."

"It is looking really good for the sock industry,' adds Bouchonnet. "Right now, North Carolina is making all the socks for the entire military and a lot of the yarn is also made in North Carolina. But, there are still companies going out of business, and Dean and I are trying to stop that."

Allred and Bouchonnet work with the national association for the Sewn Products Industry, SEAMS, to help apparel and textile manufacturers to keep them abreast of government contracts for those industries and help them bid for them.

"About 40 hosiery manufacturers have taken interest in the government contracts and a good 25 have pursued the business," says Allred.

Five N.C. hosiery companies hold government contracts to make socks for the military. They are Pickett Hosiery, Elder Hosiery and Special T Hosiery Mills in Burlington, and Thorlo in Statesville and Catawba Sox in Newton.

Although competition for the contracts has driven down the profit somewhat, manufacturers say military contracts are still very good for their bottom lines. One hosiery manufacturer said the business is probably responsible for keeping his company open.

"Everybody is hungry for the business and that is causing the price to go down," said a manufacturer who asked not to be named. "Then, they find a way to get around the specs and use cheaper yarns to the point the price gets lower and lower."

The government is primarily interested in socks with antimicrobial and wicking properties and fire retardant materials, says Bouchonnet.

"The government gives the requirements which may be in moisture wicking, fire retardant or antimicrobial," explains Allred. " It is up to the manufacturers to come up with the right materials and the right product at the right price. Once it becomes a long-term issue item, then there are specific specifications written that mandate what raw materials can be used.

"The military has testing labs the same as commercial labs that may do abrasion testing, and testing for wicking and anitmicrobial," says Allred.

High Performance & Technologically Advanced Yarns
Performance Yarns
Merino wool and wool blends
Lambswool
Isolwool and Isolfil
Tilsa 1/18 High Bulk Acrylic Colors
Neofil™ Filament Polypropylene colors
Custom Twisted Yarns
Slubs, Nubs, Colors and Natural
Cotton Heather Yarns
Luxury Yarns
Ferre-Hickory
Regenerated, Environmentally Friendly
Cotton/Acrylic Yarns.
• (CAFTA certified)
• OEKO-TEX Standard 100 in stock colors
HTC
Hickory Throwing Co.
520 20th St. SE • Hickory, N.C. 28602
828-322-1158 • Fax 828-322-6974
For Information contact Rob Zellmer
rzellmer@hickorythrowing.com

North Carolina Military Business Center

Mission:

To leverage military and other federal business opportunities for economic development and quality of life in North Carolina

Goals

- Increase military business for existing North Carolina companies
- Support recruitment and development of defense businesses in North Carolina
- Integrate transitioning military personnel and family members into the workforce

Programs and Strategies

Business Development Program

- Engage North Carolina companies in the military marketplace
- Identify and connect North Carolina businesses to current opportunities
- Provide solicitation and proposal assistance to businesses to win contracts
- Pre-position North Carolina businesses for prime and subcontracts

Military Sustainment Program

- Reverse Engineering Initiative: engineer and produce parts for aging DoD aircraft
- Defense Machining Initiative: assess and post DoD solicitations to SourceNC.com

Technology Resources Program

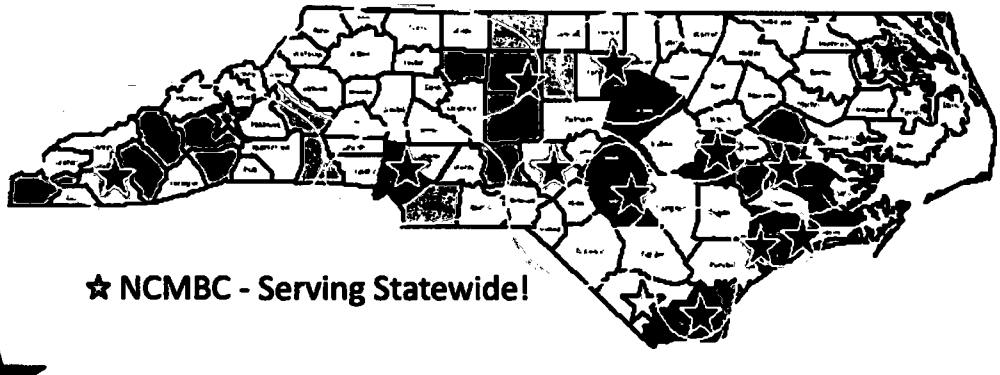
- MatchForce.org: connects businesses to contract opportunities & job seekers
- NCMBC.us: provides program data, capabilities matrices and contracting resources

Employment Program

- MatchForce.org: connects transitioning military personnel & others to NC jobs
- Transitioning military database: identifies potential workforce to growing businesses
- "StayNC" and "I Hire Military": targeted at transitioning military and NC employers

Strategic Initiatives Programs

- Military construction: connect businesses with $5-7 billion in MILCON work in NC
- Subcontracting: develop opportunities with major DoD prime contractors
- Emerging opportunities: identify and pre-position NC firms for future opportunities
- Base growth, technology transition, business capacity: leveraging future growth



☆ NCMBC - Serving Statewide!

Statewide Offices

☆NCMBC Headquarters
Executive Director, Scott Dorney

☆Data Mgmt. & MatchForce.org
Lydia Joglar, 910-323-4587

☆Marketing & Employment
Courtney Smedick, 910-323-4892

☆Procurement Analyst, Holly Powell

☆Military Construction Specialists
Jennifer Burrell & Sue Kranes

☆Strategic Initiative Programs
Wilmington, Thomas "Mickey" Finn

☆Aerospace Alliance Coordinator
Joe Gragg, 919-259-5693

910-323-4587/877-245-5520
P.O. Box 1748, 515 Ramsey Street
Fayetteville, NC 28302

☆Business Development Team:
Durham, 910-578-2626
Bill Greuling, Manager

☆Asheville/Franklin, 828-349-3878
Teresa Bouchonnet

☆Charlotte, 704-806-6858
Fran Perez-Wilhite

☆Greensboro, 336-334-4822
ext 4804, Rick Gilmore

☆Pinehurst, 910-728-5122
Linn Owen

☆Fayetteville, 910-323-4825

☆Goldsboro, 919-735-5151
ext 306, Cindy Marrette

☆Jacksonville
Kara Collins, 910-938-6785
Carolyn Bunting, 910-938-6829

☆Havelock, 252-444-2171
Bert Linkonis

☆Elizabeth City - Vacant

ncmbc
CONNECTING BUSINESS AND MILITARY

www.NCMBC.us
www.MatchForce.org

North Carolina Military Business Center

Goals: Increase federal contracting with NC firms; recruit defense contractors; integrate military into the workforce

Business Development (8 APR 2009)

- Team operating in 12 locations (10 Community Colleges)
- 2009: Firms won 33 contracts, worth $190 - 890 million
- 2005-9: Firms won 610 contracts, worth $1.2-$2.8 billion

MatchForce.org (8 APR 2009)

- 13,161 NC businesses, 28,214 individuals registered
- 7,473 contract, 3,748 job opportunities; all State jobs
- $518.6 million in known "wins" by notified firms, 2006-09

Strategic Focus

- Construction: win fair share of $7 billion at bases by 2013
  - NC firms to compete; out-of-state firms to locate in NC
- Pre-positioning: NC firms for major contracts
- Subcontracting: develop opportunities with major primes
- Sustainment: Aerospace, SourceNC, reverse engineering
- Fully leverage BRAC, recruitment opportunities
- Employment: 10,000 job postings

North Carolina Community College System
Preparing North Carolina's World-Class Workforce

FTCC

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CONNECTING BUSINESS AND MILITARY

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, April 22, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 323	Prevent the Theft of Scrap Metals.	Representative Gulley Representative Tillis
HB 825	Garbage Collection Trucks Parking on Highways.	Representative Owens, Jr.
HB 1219	No Automatic Contract Renewals.	Representative Allred

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:45 p.m. on **April 20, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, April 22, 2009
1:00 P. M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor
HB 323	Prevent the Theft of Scrap Metals	Representative Gulley Representative Tillis
HB 825	Garbage Collection Trucks Parking on Highways	Representative Owens, Jr.
HB 1219	No Automatic Contract Renewals	Representative Allred

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, April 22, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, April 22, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Goforth, Stewart, and Wilkins, Vice Chairs: Representatives Allen, Allred, Avila, Blackwell, Boles, Braxton, Brown, Cole, Floyd, Frye, Harrell, Mills, Owens, Pierce, Rapp, Samuelson, and Tarleton. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 825 – A BILL TO BE ENTITLED AN ACT TO PERMIT GARBAGE TRUCKS TO STOP ON THE PAVEMENT OF HIGHWAYS OUTSIDE MUNICIPAL LIMITS WHILE COLLECTING GARBAGE OR RECYCLABLE MATERIAL.
Sponsor: Representative Owens, Jr.
Representative Owens presented the bill. He explained that the bill would allow garbage trucks and recyclable trucks to stop on the highway outside of the corporate limits. The North Carolina Department of Transportation has no objections to the bill. Discussion followed. Representative Floyd moved for a favorable report of HB 825. The motion passed.

HB 323 – A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY.
Sponsor(s): Representative Gulley and Representative Tillis

The Chair previously appointed a subcommittee on HB 323 consisting of Representatives Braxton (Chair), Avila, Cole, McGee, and Pierce and thanked them for their diligence. Representative Tillis presented the bill. He met with the subcommittee and later met separately as a result of that subcommittee and identified things that needed to be done: (1) additional maneuvers that law enforcement and prosecutors need to tighten this up and reduce the incidence of theft related to stealing and selling scrap metal, and (2)

recognized legitimate business concerns brought forth by industry—actual owners of metals businesses as well as the representative of the industry. He met with Major Leonard, Mark Newbold, Staff Attorney, City of Charlotte, and the aforementioned and put together what everyone felt was a consensus bill. Representative Tillis knew of no opposition to the bill as amended and said the intent of the bill was to focus on a fingerprint requirement for things most often involved in the thefts that they are trying to prevent such as catalytic converters, and HVAC units—things that are coiled. He recognized Karen Cochrane-Brown to explain the proposed committee substitute. Representative Wilkins moved for adoption of the proposed committee substitute, and it was adopted. Representative Braxton moved for a favorable report to the proposed committee substitute, unfavorable to the original bill and re-referral to the Committee on Judiciary III. The motion passed.

The Chair announced that HB 1219 – A BILL TO BE ENTITLED AN ACT TO PROHIBIT AUTOMATIC CONTRACT RENEWALS IN CONSUMER OR BUSINESS CONTRACTS sponsored by Representative Allred would not be heard. Representative Allred needed more time to work on the bill. The bill will be heard at a later date.

The meeting adjourned at 1:25 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

Subcommittee on House Bill 323
Meeting
April 14, 2009

The Chair, Representative R. Van Braxton, called to order the meeting of the Subcommittee on House Bill 323 at 9:20 a.m. The following committee members were present: Representative William "Bill" McGee, Representative Marilyn Avila and Representative Van Braxton. Research Staff member, Karen Cochrane-Brown, was present. The bill's primary sponsors, Representative Thom Tillis and Representative Jim Gulley were present. The following members of the audience were invited to make comments: Bill Perry of Atlantic Scrap Metal Co., Reginald Griffin of D.H. Griffin Company, Bill Shaw of Metal Recycling Co., and Will Culpepper, a lobbyist representing scrap metal companies.

The goal of Representative Tillis in filing this bill is to curtail theft of scrap metal. It was requested by the Mecklenburg County authorities, according to Representative Tillis. Representative McGee had questions about Line 15 on page 3 of the bill. Representative Avila asked questions about the process of buying and selling and how this could be used in regulating the illegal sales of scrap metal.

Bill Perry pointed out several issues in the bill such as documentation, confidentially, and policing. He particularly pointed out the following excerpts: Lines 10 & 15 Page 3; Page 2 at the top of the page, Line 46, Page 3; and Lines 3 & 6, Page 3. Online availability by the dealers is not a problem, according to Mr. Perry, in answer to Representative Braxton's question. Representative Tillis ask about the list of items on Page 3, a-n. Representative McGee had concerns about private citizens being caught up in this law.

Representative Tillis proposed that the stakeholders get together with law enforcement representatives and county authority to iron out the issues with the bill. He will inform Representative Braxton of their progress and when they have resolved the problems with the bill. The members of the subcommittee agreed on this course of action.

The Chair adjourned the meeting at 9:50 a.m.

Barbara Hocutt, Committee Assistant

VISITOR REGISTRATION SHEET

Commerce, SMALL BUSINESS & ENTREPRENEURSHIP — 4-22-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	NC chamber
Kim Hibbard	NCLM
Roger Knight	Wyrick Robbins / Waste Industries
DAVID BARNES	Poyner Spruill
Phil Carter	WASTE INDUSTRIES
Tracy Kimbrell	Parker Poe
SCOTT GARDNER	DUKE ENERGY

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship 4.22.09

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Perry	Atlantic Scrap
	Penn Brothers
Mark Newbold	CMPO DUCCED ATTY

House Pages

Commerce, SMACC Bus., ENTERPR NURSHIP

Name of Committee: _____ **Date**: 4/22/09

1. Name: Chris Patterson
   County: Sampson
   Sponsor: Jabeel challenge
2. Name: Fann, Michael
   County: Sampson
   Sponsor: Tar Heel Challenge
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Trey Raley
2. Name: Toissant Avent
3. Name: Carlee Coker
4. Name: _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Committee Substitute for

HB 825 A BILL TO BE ENTITLED AN ACT TO PERMIT GARBAGE TRUCKS TO STOP ON THE PAVEMENT OF HIGHWAYS OUTSIDE MUNICIPAL LIMITS WHILE COLLECTING GARBAGE OR RECYCLABLE MATERIAL.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 825:
Garbage Collection Trucks Parking on Highways

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	April 22, 2009
Introduced by:	Rep. Owens	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 825 would allow garbage trucks to stop on the pavement of highways outside municipal limits while collecting garbage or recyclable material.***

CURRENT LAW: Current G.S. 20-161(a) prohibits vehicles from stopping on the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled. Violation of this subsection is an infraction, subject to a penalty not to exceed $100. (G.S. 20-176).

BILL ANALYSIS: House Bill 825 would exempt solid waste vehicles engaged in collecting garbage or recyclable material, as defined in G.S. 20-118(c)(5)g. and G.S. 130A-290(a)(26), from the prohibition on stopping or standing on a highway.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to offenses occurring on or after that date.

BACKGROUND: Text of G.S. 20-118(c)(5)g.:

"g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Text of G.S. 130A-290(a)(26):

"(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste."

H825-SMRN-30(e2) v3

**Giles Perry contributed substantially to the drafting of this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 825
Committee Substitute Favorable 4/8/09

Short Title: Garbage Collection Trucks Parking on Highways. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT GARBAGE TRUCKS TO STOP ON THE PAVEMENT OF HIGHWAYS OUTSIDE MUNICIPAL LIMITS WHILE COLLECTING GARBAGE OR RECYCLABLE MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge. This subsection shall not apply to a solid waste vehicle stopped on a highway while engaged in collecting garbage as defined in G.S. 20-118(c)(5)g. or recyclable material as defined in G.S. 130A-290(a)(26)."

SECTION 2. This act becomes effective October 1, 2009, and applies to offenses occurring on or after that date.

HOUSE BILL 1219

Short Title:	No Automatic Contract Renewals.	(Public)
Sponsors:	Representative Allred.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT AUTOMATIC CONTRACT RENEWALS IN CONSUMER OR BUSINESS CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-41 reads as rewritten:

"**§ 75-41. Contracts with automatic renewal clauses.**

(a) ~~Any~~ A person, firm, or corporation engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer or business pursuant to a ~~contract, where the contract automatically renews unless the consumer cancels the contract, shall disclose the automatic renewal clause clearly and conspicuously in the contract or contract offer.~~contract shall not include in such a contract any term that has the effect of causing the contract to be automatically renewed at the expiration of the contract's term.

~~(b) Any person, firm, or corporation engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract, where the contract automatically renews unless the consumer cancels the contract, shall disclose clearly and conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery of products or services.~~

~~(c) A person, firm, or corporation that fails to comply with the requirements of this section is in violation of this section unless the person, firm, or corporation demonstrates that all of the following are its routine business practice:~~

~~(1) It has established and implemented written procedures to comply with this section and enforces compliance with the procedures.~~

~~(2) Any failure to comply with this section is the result of error.~~

~~(3) Where an error has caused the failure to comply with this section, it provides a full refund or credit for all amounts billed to or paid by the consumer from the date of the renewal until the date of the termination of the contract, or the date of the subsequent notice of renewal, whichever occurs first.~~

(d) This section does not apply to insurers licensed under Chapter 58 of the General Statutes, or to banks, trust companies, credit card companies, savings and loan associations, savings banks, or credit unions licensed or organized under the laws of any state or the United States, or any foreign bank maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or affiliate thereof.

(e) A violation of this section renders the automatic renewal clause void and ~~unenforceable.~~unenforceable and is an unfair and deceptive trade practice under G.S. 75-1.1."

SECTION 2. This act is effective when it becomes law and applies to all contracts regardless of when they are entered into.

Brenda Lee (Rep. Dickson) Handout

From: Dennis Brown [DBROWN@ELFAONLINE.ORG]
Sent: Wednesday, April 22, 2009 12:20 PM
To: Rep. Margaret H. Dickson; Rep. Cary Allred
Subject: House Bill 1219 - Statement In Opposition
Attachments: House Bill 1219 - ELFA Statement of Wednesday, April 22.doc

Attached is a statement by the Equipment Leasing & Finance Association in opposition to House Bill 1219

Dennis Brown
Vice President State Government Relations
Equipment Leasing and Finance Association
1825 K Street NW, Suite 900
Washington, DC 20006
Phone: (202) 238-3411
Fax: (202) 238-3401
dbrown@elfaonline.org
www.elfaonline.org

House Committee on Commerce, Small Business, and Entrepreneurship
House Bill 1219

Statement in Opposition
Equipment Leasing & Finance Association (ELFA)

I appreciate this opportunity to present a statement on behalf of the Equipment Leasing & Finance Association (ELFA) in opposition to House Bill 1219 that seeks to prohibit automatic renewal clauses in contracts. ELFA is the trade association representing financial services companies engaged in financing the utilization and investment of/in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. More information is available about ELFA at http://www.elfaonline.org/

ELFA is unaware of state legislation ever being proposed in the country to forbid commonly used automatic renewal leasing provisions that alert a lessor to end-of-lease intentions of lessees. This customary renewal provision enables lessors to make arrangements for the refurbishment and remarketing of the off-lease equipment while providing lessees with terms for renewal. These provisions also bring greater certainty to lessors and lessees and often result in lower rental charges for lessees.

House Bill 1219 not only impacts origination of new leasing transactions but puts at risk existing contracts. ELFA finds House Bill 1219 contradicts practices of the intrastate and interstate commercial marketplace and asks that it receive an unfavorable recommendation of the House Committee on Commerce, Small Business, and Entrepreneurship.

Dennis Brown
Vice President State Government Relations
Equipment Leasing and Finance Association
1825 K Street NW, Suite 900
Washington, DC 20006
Phone: (202) 238-3411
Fax: (202) 238-3401
dbrown@elfaonline.org
www.elfaonline.org

URGENT

Brenda Lee (Rep. Dickson)

From: Ron Barnes [rbarnes@the-dma.org]
Sent: Tuesday, April 21, 2009 4:54 PM
To: Rep. Margaret H. Dickson
Subject: regarding HB 1219, prohibiting automatic renewal contracts
Attachments: HB 1219 letter to Rep Dickson.doc

Representative Dickson,

Attached is a letter outlining my organization's concerns with HB 1219, scheduled to be heard in the House Commerce, Small Business and Entrepreneurship Committee tomorrow. I appreciate your consideration of these comments in advance of the hearing and will be happy to provide any additional information needed.

Sincerely,
Ron Barnes
Vice President, State Affairs
Direct Marketing Association
1615 L St., NW
Suite 1100
Washington, D.C. 20036
Direct (202) 861-2414
Mobile (202) 215-2967
Fax (202) 955-0085
rbarnes@the-dma.org

DMA
Direct Marketing Association

The Power of Direct
Relevance. Responsibility. Results.

April 21, 2009

Representative Margaret Dickson
Chair, House Commerce, Small Business
and Entrepreneurship Committee
16 W. Jones Street
Room 2217
Raleigh, NC 27601-1096

Dear Representative Dickson:

I am writing on behalf of the Direct Marketing Association (DMA), with regard to HB 1219, which would eliminate the option of automatic renewal of contracts. While we respect the sponsor's concern for his constituents, we must express our disapproval with this legislation.

DMA is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques, including the U.S. Mail. DMA represents more than 3,600 companies from dozens of vertical industries in the U.S. and 50 other nations, including a majority of the Fortune 100 companies, as well as nonprofit organizations. Included are catalogers, financial services, book and magazine publishers, retail stores, teleservices providers, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them, such as printers.

A total, indiscriminate ban on the use of automatic renewal clauses would be a tremendous disservice to consumers. Allowing a contract to automatically renew is a convenience and helps ensure that there are no lapses in service or access to goods. There are many arrangements that consumers enter into with the full intention of continuing until they decide to cancel, such as pre-season home heating or cooling maintenance, pest control, gym memberships or subscriptions to online services. The bill would create situations where inattention or inadvertent oversight by the consumer could cause a contract to expire – whether or not that was the intent of the consumer. The burden is then placed back on the consumer to reinstitute the contract.

The bill does not allow consumers and businesses to conduct a transaction under terms that could be mutually agreed upon. Automatic renewals are allowed in other states and are not unfamiliar to consumers. Excluding North Carolina consumers from this useful and convenient mechanism is unwarranted.

DMA believes that consumers should be aware, when entering into a contract, that the contract has a provision to automatically renew and that there are steps to prevent such a renewal if the consumer so chooses. We believe that disclosures should be clear and unambiguous and that all companies should

1615 L Street NW, Suite 1100 • Washington, DC 20036-5624
t: 202.955.5030 f: 202.955.0085
www.the-dma.org

behave responsibly. While there are examples of organizations acting improperly with respect to automatic renewals, banning all such arrangements is not a cure and will harm consumers..

I would be pleased to talk with you more about our concerns described in this letter and respectfully ask that you not advance this bill.

Sincerely,

Ron Barnes
Vice President, State Affairs

cc: House Commerce, Small Business and Entrepreneurship Committee

CORRECTED NOTICE

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, April 29, 2009
TIME: **15 Minutes after House Session**
LOCATION: **643 LOB**
COMMENTS: House Session convenes at 1:00 p.m.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 806	Notice on Liens for HOA Assessments.	Representative Weiss Representative Earle Representative Glazier Representative Cotham
HB 843	Workers' Comp/Medical Diagnostic Testing.	Representative Jackson
HB 1027	Prepaid Wireless Telephone Service/Sunset.	Representative Brubaker
HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1356	Commercial Real Estate Broker Lien Act.	Representative McCormick Representative Gibson, III
HB 1514	IDF Limitation Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III
HB 1516	JDIG Technical Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:00 a.m. on **April 28, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, April 29, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 806	Notice on Liens for HOA Assessments.	Representative Weiss Representative Earle Representative Glazier Representative Cotham
HB 843	Workers' Comp/Medical Diagnostic Testing.	Representative Jackson
HB 1027	Prepaid Wireless Telephone Service/Sunset.	Representative Brubaker
HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1356	Commercial Real Estate Broker Lien Act.	Representative McCormick Representative Gibson, III
HB 1514	IDF Limitation Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III
HB 1516	JDIG Technical Modifications.	Representative Crawford, Jr. Representative Dickson Representative Gibson, III

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:00 p.m. on **April 24, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, April 29, 2009
3:00 P.M.
Room 643, LOB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 806	Notice on Liens for HOA Assessments	Rep. Weiss Rep. Earle Rep. Glazier Rep. Cotham
HB 843	Workers' Comp/Medical Diagnostic Testing	Rep. Jackson
HB 1027	Prepaid Wireless Telephone Service/Sunset	Rep. Brubaker
HB 1057	Abolish Certain Deficiency Judgments	Rep. Blue
HB 1356	Commercial Real Estate Broker Lien Act	Rep. McCormick Rep. Gibson, III
HB 1514	IDF Limitation Modifications	Rep. Crawford, Jr. Rep. Dickson Rep. Gibson, III
HB 1516	JDIG Technical Modifications	Rep. Crawford, Jr. Rep. Dickson Rep. Gibson, III

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, April 29, 2009
3:00 P.M.
Room 643, Legislative Office Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, April 29, 2009, in Room 643, Legislative Office Building at 3:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Allred, Avila, Blackwell, Boles, Braxton, Cole, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, McGee, Mills, Owens, Samuelson, Steen, Tarleton, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 806 - A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT NOTICE OF A CLAIM OF LIEN FOR ASSESSMENTS FILED BY A HOMEOWNERS ASSOCIATION BE SERVED ON THE LOT OWNER IN THE SAME MANNER AS SERVICE OF A SUMMONS IN A CIVIL ACTION.
Sponsors(s): Representatives Weiss, Earle, Glazier, and Cotham
Representative Cole moved to adopt the proposed committee substitute, and it was adopted. Representative Weiss presented the bill. She said the bill is being presented because of concerns about foreclosures taking place in homeowners' association communities where owners of the property have not had much notice. There is a rising rate of foreclosures in North Carolina and this would provide homeowners better notice. She provided a handout from Lorrin Freeman, Clerk of Superior Court for Wake County, indicating that the Conference of Clerks of Superior Court support the original bill. The proposed committee substitute will ensure that prior to filing a claim of lien, a homeowners association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The point is to make sure that if people are going to file a claim of lien that they try to make certain that the homeowner gets notice to keep them from losing their homes through foreclosure. Discussion followed. Representative Starnes moved for a favorable report for the House committee substitute for HB 806, unfavorable to original bill, and a re-referral to the Committee on Judiciary II. The motion passed.

HB 1027 – A BILL TO BE ENTITLD AN ACT EXTENDING THE SUNSET ON THE COLLECTION OF SERVICE CHARGES FOR PREPAID WIRELESS TELEPHONE SERVICE. Sponsor: Representative Brubaker
Representative Brubaker presented the bill and said it did exactly what the title said. It extends the sunset for another year and three months. Reflecting on 911 services, last session legislators combined the wireless with the ground lines ($.70 for the 911 charge) obviously prepaid was a different "animal", and they are trying to get all the bugs worked out which is the reason for the request of the extension. Discussion followed. Representative Wilkins moved for a favorable report to HB 1027 with a re-referral to the Committee on Finance. The motion passed.

HB 1057 – A BILL TO BE ENTITLED AN ACT TO ABOLISH DEFICIENCY JUDGMENTS WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE. Sponsor: Representative Blue
Representative Boles moved to adopt the proposed committee substitute, and it was adopted. Representative Blue explained the proposed committee substitute. It limits what they are trying to do to rate spread loans and loans of negative amortization. Under the current law since 1933, we have not allowed deficiency judgments on purchase money loans if the seller financed the transaction. It was commonplace until the 1950s. The bill would broaden North Carolina's law to match up with practices in many other states. He said under certain limited circumstances, we want the security for these loans to exhaust your ability when it comes to collecting any deficiency. The Chair recognized Al Ripley with the North Carolina Justice Center. He said the bill was designed to protect people who have been victimized by predatory loans and ensure they are not further victimized by falling into deficiency judgments. The Chair also recognized Paul Stock representing North Carolina Bankers Association. Mr. Stock worked with Representative Blue and Mr. Ripley on the legislation and said they are almost in agreement with a little more work to be done and supported it. Representative Floyd moved for a favorable to the proposed committee substitute, unfavorable to the original bill, and a re-referral to the Committee on Judiciary II. The motion passed.

HB 1356 – AN ACT TO ENACT THE COMMERCIAL REAL ESTATE BROKER LIEN ACT. Sponsor(s): Representative McCormick and Representative Gibson, III
Representative McCormick presented the bill. He said the Commercial Lien Act is in 26 states and the format used in this bill is similar to the one in 14 states. It has been modified to correspond to North Carolina General Statutes for the definition of what a commercial realtor is. He has worked with title companies and realtors to put in front of instead of behind the title change. Kim Crouch representing the Real Property Section of the North Carolina Bar Association appeared before the Committee and expressed significant concerns with the bill. Rick Zechini representing the North Carolina Association of Realtors appeared before the Committee stated that he had worked with the bill sponsor and provided information in crafting the bill, but had not taken a position on the bill as introduced. Representative Gillespie moved that a study committee be appointed by the Chair. Representative Stewart moved for a favorable report with a re-referral to the Committee on Judiciary II. By a vote of 9-3, the motion passed.

HB 1516 – A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.
Sponsor(s): Representatives Crawford, Jr., Dickson, Gibson, III
Representative Stewart offered an amendment; Representative Boles moved for adoption, and it was adopted. Drupti Chauhan, Counsel explained that the amendment was technical. Representative Gibson presented the bill and said that JDIG was one of the most successful economic development grant programs in the country. The Chair recognized Karen West, Deputy General Counsel, NC Department of Commerce, who is responsible for the JDIG Program identified technical changes to be cleared up in the bill. Representative Blackwell did not feel that extending the sunset by six years was only technical in nature. Representative Gillespie felt the bill was a good one. He served on a study committee last session and the General Assembly appropriated approximately $350,000 to review all incentive-type programs. He said this is the top program that actually created jobs for North Carolina and offered to provide the document to Representative Blackwell. Discussion followed. Representative Goforth moved for a favorable report to the proposed committee substitute, unfavorable to the original bill and recommended the proposed committee substitute be re-referred to the Committee on Appropriations. Representative Goforth moved for a favorable report as amended, unfavorable to the original with a re-referral to the Committee on Appropriations. The motion passed.

1514 - A BILL TO BE ENTITLED AN ACT TO EXPAND ECONOMICALLY DISTRESSED COUNTIES TO INCLUDE ALL TIER ONE AND TIER TWO COUNTIES AND TO INCREASE THE MAXIMUM EXPENDITURE OF FUNDS FROM THE INDUSTRIAL DEVELOPMENT FUND.
Sponsor(s): Representatives Crawford, Jr., Dickson, and Gibson, III
Representative Gibson presented the bill. Discussion followed. Representative Tarleton moved for a favorable report to HB 1514 with a re-referral to the Committee on Finance, then to the Committee on Appropriations. Before the vote was taken, Representative Owens was recognized. He said that maybe at a later date when the bill goes to Finance, an amendment could be proposed. He was concerned that the Utility Fund is a very small fund designed to go to the poorest counties, and now Tier 1 and Tier 2 (80 counties). That means that everyone is going to get funding, there will not be much money to go around. He would like to offer an amendment at a later date to ensure at least half of the money stays in Tier 1 counties because that is what it was designated to do. When JDIG first began, it was five tiers and going to Tier 1 and Tier 2 counties. Otherwise, the bigger counties would absorb all of the money and the small counties would not get anything. The motion by Representative Tarleton motion passed.

HB 843 – AN ACT TO REQUIRE THE ATTENDING PHYSICIAN OF AN EMPLOYEE TO SELECT THE HEALTH CARE PROVIDER AND THE DIAGNOSTIC SERVICES CENTER TO ADMINISTER AND ANALYZE ANY DIAGNOSTIC TESTS AUTHORIZED BY A PHYSICIAN UNDER THE WORKERS' COMPENSATION ACT. Sponsor: Representative Jackson
Representative Jackson presented the bill and gave a brief history. It is the same bill that passed the House last session 112-4. He said that the doctors and workers' compensation

attorneys are in agreement with the bill. He had three doctors who had agreed to appear before the Committee; however, due to the change in the time of the House Session, they were not able to attend. Representative Jackson provided letters from them. Heidi Chapman, PLLC, Chapel Hill, NC appeared before the Committee on behalf of workers' compensation attorneys and doctors. She has practiced workers' compensation law for 25 years. Their major concern is that doctors are leaving these cases. They will not handle workers' compensation cases because they cannot control the diagnostic studies. By not controlling diagnostic studies, they cannot control the standard of care. They cannot provide the standard of care that they need to in order to avoid liability and to do what they love to do—practice medicine. She asked the Committee to allow doctors to choose where the diagnostic studies are done and who reads those diagnostic studies which is just as important. The Medical Society is supporting the bill as written. Handouts are from Ortho Carolina (largest orthopedic practice in NC) and they support the bill, and Carolina Neurosurgery (largest neurosurgical practice in NC) is in support of the bill. Scarlet Garner, NC Medical Society, appeared before the Committee and reminded them that the NC Industrial Commission sets the medical fee schedule by which all providers must abide with regard to injured workers medical treatment. She said the Medical Society supports the bill as written and that it solely serves the goal of insuring that workers' compensation patients receive the same quality medical treatment as all other patients, but if there are any amendments to the bill, they will want to reexamine them to determine whether or not to continue to support it. The Chair recognized Bob Kaylor who represents 30 employers associations including school districts and state government agencies that use the company One Call Medical. They go out and sign contracts with radiologists and with these centers, and they do a rate from 15 to 30 percent lower than these physicians. He said the bill is about trial lawyers who want to send diagnostic testing to a radiologist that they use every time so they know what the reads will be. It is about the physicians who want to send it to their own groups. For example, the fee schedule at the Industrial Commission for a back injury is approximately $655. For the radiologist, $163 = over $820. One Call Medical has contracts that average $600. If the bill is passed, it will change the way the workers' compensation system works because employers are supposed to be involved in the medical payment for the claims. At the present time, if the doctor does not like the referral, they can ask the Commission to re-refer it. One Call Medical refers out of their network about 1 and 15 of the reads. This is about some physicians who want to refer it to their own group; fees will go up; companies will pay more by as much as 15 to 25 percent. Cities and school districts will pay more—all who use this system will pay more. He warned Committee members to be careful. The bill did pass before, but it was not debated and went quickly in 2007 in the House and was stopped in the Senate. He strongly opposed the bill. Representative Floyd moved that the bill be displaced until the next Committee meeting. The motion passed.

The meeting adjourned at 4:00 p.m.

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business and Entrepreneurship — 4-29-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim LORE	R. JAMES LORE, ATTY AT LAW, CARY NC
Heidi Chapman	Heidi G. Chapman, PLLC, Chapel Hill, NC
Gina Schwartzgebel	Builders Mutual Insurance Company
[illegible]	Atty Raleigh
Hope Carmichael	Atty Raleigh
Lauren Whaley	NC Credit Union League
Deborah F. Holland	100 Billington Ct, Cary, NC 27513
Paul Stock	NC Bankers Assn
Allison Waller	Charlotte Chamber
[illegible]	NCFA
DAVID BARNES	Poyner Spruill
Thomas Moore	Elected Utils

VISITOR REGISTRATION SHEET

House Commerce, Small Business and Entrepreneurship 4-29-09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karen West	NC Dept of Commerce
Mark Poole	NCDOC
Carin Havard	NCAJ
Kelly Graham	NCAJ
Jake Castion	WS Chamber

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship April 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lynn Schwitzgebel	Builders Mutual Insurance Company
Kari Hammond	WCSR
Sara Klein	NC Dept of Commerce

VISITOR REGISTRATION SHEET

House Commerce, Small Business and Entrepreneurship — 4-29-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kelly	Ctr. for Responsible Lending

House Pages

Commerce

Name of Committee: _____ **Date**: 4-29-09

1. Name: Staci Driver
   County: Jones County
   Sponsor: Pat McElraft
2. Name: Reese Miller
   County: Wake
   Sponsor: Stam
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: MARTHA GADISON
2. Name: TRey RAiley
3. Name: DUSTY Rhodes
4. Name: _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 806 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT NOTICE OF A CLAIM OF LIEN FOR ASSESSMENTS FILED BY A HOMEOWNERS ASSOCIATION BE SERVED ON THE LOT OWNER IN THE SAME MANNER AS SERVICE OF A SUMMONS IN A CIVIL ACTION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 806*
PROPOSED COMMITTEE SUBSTITUTE H806-PCS50614-RO-24

Short Title: Notice on Liens for HOA Assessments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 2. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

HOUSE BILL 806:
Notice on Liens for HOA Assessments

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	April 28, 2009
Introduced by:	Reps. Weiss, Earle, Glazier, Cotham	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H806-CSRO-24		

SUMMARY: ***House Bill 806 amends the Planned Community Act to require that a homeowners association attempt to ensure that its notices of assessment have been sent to the lot owner's current mailing address.***

[As introduced, this bill was identical to S961, as introduced by Sen. Nesbitt, which is currently in Senate Judiciary I.]

CURRENT LAW:

Under current law, when any homeowner assessments levied against a lot remain unpaid for 30 days, the association is authorized to file a claim of lien against the property in the office of the clerk of superior court. The law also provides that the association may use the power of sale foreclosure statute under Article 2A of Chapter 45 to enforce the lien.

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 806 imposes a requirement on the homeowner association to use reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. If the association sends assessment notices to the lot owner's current address, rather than just the property address, it may be able to avoid foreclosure proceedings in some cases.

The requirement is also added to the provision authorizing payment of attorney's fees by the lot owner if the owner has been notified by an attorney.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

H806-SMRO-50(CSRO-24) v2

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HOUSE BILL 806*

Short Title:	Notice on Liens for HOA Assessments.	(Public)
Sponsors:	Representatives Weiss, Earle, Glazier, Cotham (Primary Sponsors); and Lucas.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT NOTICE OF A CLAIM OF LIEN FOR ASSESSMENTS FILED BY A HOMEOWNERS ASSOCIATION BE SERVED ON THE LOT OWNER IN THE SAME MANNER AS SERVICE OF A SUMMONS IN A CIVIL ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Notice of the claim of lien shall be served on the lot owner in any manner provided by Rule 4 of the Rules of Civil Procedure for service of summons, including service by personal delivery, or by registered mail or certified mail, return receipt requested. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Prior to initiating a foreclosure proceeding under this subsection, the association must produce an affidavit of service of the claim of lien, and if service was made by publication in accordance with Rule 4(j1) of the Rules of Civil Procedure, the affidavit must set forth the specific facts and circumstances explaining why the lot owner cannot with due diligence be served by personal delivery, registered or certified mail. The affidavit shall be filed with the foreclosure notice of hearing.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and

charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed."

SECTION 2. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

Susan Doty (Rep. Weiss) Handout #1

From: N.Lorrin.Freeman@nccourts.org
Sent: Tuesday, April 28, 2009 10:14 PM
To: Rep. Jennifer Weiss
Cc: n.lorrin.freeman@nccourts.org
Subject: HOA foreclosures

Jennifer

Thank you very much for asking me to comment on proposed House Billl 806, Notice on Liens for HOAs.

As I mentioned earlier this week, the Conference of Clerks of Superior Court support the bill as drafted. I understand that based on requests from other interested parties, there will be a committee substitute.

As you know, the Clerks of Court serve as the judge in foreclosure matters. While it is important that we remain impartial, we do take an interest in ensuring that there are appropriate procedural safeguards in the law. We are aware that the General Assembly is concerned about the wave of foreclosures occuring throughout North Carolina and our country. Homeowner Association foreclosures are particularly troubling in that it is not unusual for the the underlying amount owed in dues to an association to be less than $1000. It is also common that the properties subject to foreclosure sale for less than $10,000. There were over 100 homeowner association foreclosures filed in Wake County alone last year. Of those filed, 45 went to a final report which indicates that property was sold away from the original property owner.

We believe that a good step in protecting property owners is ensuring that they receive notice of the HOAs filing to foreclose so that they may respond. Following our conversation on the phone earlier this week, I remembered a case that arose in our court recently that illustrates this point extremely well.

In the Matter of Foreclosure Hunters Creek Townhouse Homeowners Assn Inc. v. James C. Barbot, et al (07 SP 4670), the HOA attorney served by posting at the property in question and offered at the hearing an affidavit that indicated due diligence had been exercised in attempting to find the record owner. Following the property having been foreclosed upon and sold, the record owner became aware of these actions and came forward to contest the order to foreclose on the grounds that no reasonable effort had been made to locate him and serve him with notice of the action. The owner was not living at the property. In fact, the owner had lived IN THE SAME HOUSE in Raleigh for over thirty years as could be determined from a search of the Wake County real estate records. Further, the HOA HAD MAILED THE DUES NOTICES to the house in which the owner resided BUT FAILED TO USE THIS ADDRESS in filing the notice to foreclose. Because my assistant Clerk was provided with an affidavit at hearing indicating due diligence had been exercised to locate the owner, we granted the foreclosure upon posting. Superior Court Judge set aside the foreclosure for improper service and the individual who purchased at the sale (and arguably was an innocent third party purchaser) has now appealed the case to the Court of Appeals.

As you indicated by phone, you are aware of a separate, but similar situation as that described above. I believe your proposed bill will result in more concerted efforts by HOAs and their counsel to locate property owners providing them an opportunity to respond prior to losing their property.

If I can provide any addition information, please do not hesitate to call me.

Thank you for all your work for the people of Wake County and the State of North arolina. I will look forward to seeing you again soon.

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2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1027 A BILL TO BE ENTITLED AN ACT EXTENDING THE SUNSET ON THE COLLECTION OF SERVICE CHARGES FOR PREPAID WIRELESS TELEPHONE SERVICE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1027:
Prepaid Wireless Telephone Service/Sunset

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	April 29, 2009
Introduced by:	Rep. Brubaker	**Prepared by:**	Drupti Chauhan*
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1027 would extend the moratorium on the collection of the 911 fee from prepaid wireless providers to include the last three months of 2009 and all of calendar year 2010.

CURRENT LAW: A fee is collected from subscribers of telecommunications services for the operation of the 911 system. A uniform fee of 70¢ per month is imposed on each service connection, regardless of the technology used to deliver the service connection. The 911 Board distributes the funds collected to wireless providers and local public safety answering points (PSAPs). The wireless providers are reimbursed for costs related to compliance with enhanced 911 service. Funds distributed to the PSAPs must be used for 911 service.

Service providers collect the fee from subscribers monthly, and remit the fee to the 911 Board. Prepaid wireless providers may choose one of two methods of collecting the fee:

1. Collect the service charge from each active account with an account balance greater than the service charge.
2. Divide monthly earned prepaid wireless service revenue by $50, and multiply the result by the amount of the service charge.

In 2007, a moratorium was placed on the collection of 911 fees by prepaid wireless subscribers from August 1, 2007 until December 31, 2008. S.L. 2008-134 extended the moratorium to include the first nine months of the 2009.

BILL ANALYSIS: House Bill 1027 would extend the moratorium on the collection of the 911 fee from prepaid wireless providers to the last three months of 2009 and all of calendar year 2010.

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

BACKGROUND:

§ 62A-43. Service charge for 911 service.

...

(b) Prepaid Wireless. – A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:

(1) Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.

(2) Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars ($50.00) and multiplying the quotient by the amount of the service charge.

**Heather Fennell, Counsel to House Public Utilities, significantly contributed to this summary.*

HOUSE BILL 1027

Short Title:	Prepaid Wireless Telephone Service/Sunset.	(Public)
Sponsors:	Representatives Brubaker; and Lucas.	
Referred to:	Public Utilities, if favorable, Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT EXTENDING THE SUNSET ON THE COLLECTION OF SERVICE CHARGES FOR PREPAID WIRELESS TELEPHONE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(c) of S.L. 2007-383, as amended by Section 1(d) of S.L. 2008-134 reads as rewritten:

"**SECTION 7.(c)** Notwithstanding G.S. 62A-43, the charge imposed by that section does not apply to prepaid wireless telephone service for the ~~2008 calendar year and for the first nine months of the 2009 calendar year.~~2008, 2009, and 2010 calendar years."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1057 A BILL TO BE ENTITLED AN ACT TO ABOLISH DEFICIENCY JUDGMENTS WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1057*
PROPOSED COMMITTEE SUBSTITUTE H1057-PCS30326-RO-23

Short Title: Abolish Certain Deficiency Judgments. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence and foreclosed under power of sale.**

In all sales of real property secured by a primary residence by mortgagees or trustees under powers of sale contained in any mortgage or deed of trust, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans."

SECTION 2. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38B. Deficiency judgments abolished where mortgage secured by primary residence and made on or after January 1, 2010.**

In all sales of real property secured by a primary residence, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans. This section applies regardless of whether the real property is sold under a power of sale or as a result of court action. This section applies to mortgages made on or after January 1, 2010."

SECTION 3. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38C. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1057:
Abolish Certain Deficiency Judgments

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	April 29, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H1057-CSRO-23		

SUMMARY: ***House Bill 1057 would abolish the ability of a mortgagee to obtain a deficiency judgment after foreclosure and sale of real property against the mortgagor in certain cases where the mortgage is secured by a primary residence.***

[As introduced, this bill was identical to S819, as introduced by Sen. Hartsell, which is currently in Senate Judiciary II.]

CURRENT LAW:

Under current law, a seller of real property who takes a purchase money mortgage to secure the balance of the purchase price of the property is prohibited from obtaining a deficiency judgment on account of the mortgage. In all other cases, when the secured property is sold after foreclosure for less than the amount of the note, a lender may sue on the note given by the borrower seeking a deficiency judgment.

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 1057 abolishes the ability of a mortgagee or trustee to obtain a deficiency judgment in the sale of real property secured by a primary residence, if the defaulted mortgage loan was a rate spread loan or a nontraditional loan that features a negative amortization payment option.

A rate spread loan is a residential mortgage loan with an annual percentage rate that is at least 3% greater than a U.S. Treasury security with a comparable maturity or at least 1.75% greater than the conventional mortgage rate on a first mortgage.

A nontraditional loan that features a negative amortization payment option is a loan that allows payments that do not cover the full amount of the interest due, and where the unpaid interest is added to the principal balance of the loan. In such loans, rather than the principal balance decreasing as with standard amortization loans, the principal balance increases.

Section 1 of the bill applies to foreclosures under power of sale contained in the mortgage or deed of trust, and Section 2 applies to mortgages made on or after January 1, 2010, and would abolish deficiency judgments in foreclosure under power of sale as well as judicial foreclosure.

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

H1057-SMRO-51(CSRO-23) v1

HOUSE BILL 1057*

Short Title:	Abolish Certain Deficiency Judgments.	(Public)
Sponsors:	Representatives Blue; Harrison, Hughes, Lucas, Mackey, Parmon, and Weiss.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence and foreclosed under power of sale.**

In all sales of real property secured by a primary residence by mortgagees or trustees under powers of sale contained in any mortgage or deed of trust, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same."

SECTION 2. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38B. Deficiency judgments abolished where mortgage secured by primary residence and made on or after January 1, 2010.**

In all sales of real property secured by a primary residence, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same. This section applies regardless of whether the real property is sold under a power of sale or as a result of court action. This section applies to mortgages made on or after January 1, 2010."

SECTION 3. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38C. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

SECTION 4. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1356 A BILL TO BE ENTITLED AN ACT TO ENACT THE COMMERCIAL REAL ESTATE BROKER LIEN ACT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1356:
Commercial Real Estate Broker Lien Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	April 29, 2009
Introduced by:	Reps. McCormick, Gibson	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 1356 enacts the Commercial Real Estate Broker Lien Act.

CURRENT LAW: A lien is a claim on another's property asserted to secure payment of a debt. Chapter 44A of the General Statutes addresses statutory liens and charges. Article 2 addresses statutory liens on real property. Currently, there are no statutes which give a commercial real estate broker a lien on commercial real estate.

BILL ANALYSIS: House Bill 1356 creates a new Part in the General Statutes that provides for all of the following.

Commercial Real Estate Lien- A commercial real estate broker will have a lien on commercial real estate (or any interest in the commercial real estate) in the amount owed to the broker under a written instrument that complies with either of the following:

- Is signed by the owner of an interest in the real estate or that person's agent.
- Is signed by a prospective buyer or prospective tenants or their agent.

Contents of Lien Notice- A lien notice must be signed by the lien claimant and must contain an attestation that the information in the notice is true. The lien notice must include all of the following:

- Name of the lien claimant.
- Name of the owner of the commercial real estate.
- Description of the commercial real estate upon which the lien is being claimed.
- Amount for which the lien is claimed.
- Basis for the lien.

When Lien Attaches- A lien attaches to the commercial real estate (or an interest in the commercial real estate) *when the lien claimant files notice of the lien with the register of deeds* of the county in which the real property (or any interest in the real property) is located. There are two exceptions:

- **Leases-** The lien attaches when the claim for lien is filed.
    - **When to file**-Generally, the claim for lien must be filed within 90 days after the tenant takes possession of the leased property.
- **Lien claimant has a written agreement with a prospective buyer or buyer's agent OR if the buyer or buyer's agent has signed a written instrument-** The lien attaches when the prospective buyer purchases or otherwise accepts a transfer of the commercial real estate and files a notice of the lien within 90 days after the purchase or transfer to the buyer.

Filing of Release or Satisfaction of the Lien- If a condition occurs that would preclude the lien claimant from receiving compensation under the written instrument, the lien claimant must provide the owner a written release or satisfaction of the lien (i.e. lien claimant gives up his/her interest in the debt).

Notice of Lien-A lien claimant must mail notice of the lien to the owner (1) by certified mail or return receipt requested or (2) by following any service of process provisions in G.S. 1A-1, Rule 4.

Enforcing the Lien- A lien claimant may bring suit to enforce a lien in any court of competent jurisdiction in the county where the property is located.

- **Time limit**- Lien claimant must begin proceedings within two years after filing the lien unless the claim is based on an option to purchase the commercial real estate. Failure to commence proceedings within the two years shall extinguish the lien.

Petition- A petition filed under this section must contain all of the following:

- Statement of the terms of the agreement on which the lien is based.
- Date when the agreement was made.
- Description of the services performed.
- Amount due and unpaid.
- Description of the property that is subject to the lien.
- Any other facts necessary for a full understanding of the rights of the parties.

Who to file against and who has priority- The plaintiff must file the action against all parties which have an interest of record in the commercial real estate. Valid prior recorded liens or mortgages have priority over a lien under this Part.

Lien claimant failing to file suit or answer in pending suit w/in 30 days (Lien extinguished)- If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after written demand, the lien must be extinguished. Service of the demand must be by registered or certified mail, return receipt requested, or by personal service.

Satisfaction or release of lien- If the claim has been paid in full or if the lien claimant fails to institute a suit to enforce the lien within the time provided by law, the lien claimant must acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

Costs paid by non-prevailing party- The costs of any proceeding brought to enforce a lien, including reasonable attorneys' fees and prejudgment interest, is paid by the nonprevailing party or parties.

Escrow Account- Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a lien claim would prevent the closing of a transaction, an escrow account must be established with the clerk of the superior court in the county in which the commercial real estate is located. The escrow account is created from the proceeds of the transaction in an amount equal to 150% of the amount that is sufficient to release the claim of lien. A party cannot refuse to close a transaction based on the requirement to establish an escrow account.

The proceeds held in that escrow account must be held by the clerk until the parties' rights to the escrowed funds have been determined by written agreement of the parties, a final judgment of a court of competent jurisdiction or other process to which the parties may agree.

EFFECTIVE DATE: This act becomes effective December 1, 2009.

H1356-SMRN-37(e1) v7

HOUSE BILL 1356

Short Title:	Commercial Real Estate Broker Lien Act.	(Public)
Sponsors:	Representatives McCormick, Gibson (Primary Sponsors); Brubaker, Cole, Crawford, Daughtry, Goforth, Holliman, Howard, Jones, Killian, Lewis, Samuelson, Stewart, Tillis, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE COMMERCIAL REAL ESTATE BROKER LIEN ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 44A of the General Statutes is amended by adding a new Part to read:

"Part 4. Commercial Real Estate Broker Lien Act.

"**§ 44A-24.1. Short title.**

This Part shall be known and may be cited as the 'Commercial Real Estate Broker Lien Act.'

"**§ 44A-24.2. Definitions.**

The following definitions apply in this Part:

(1) Commercial real estate. – Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for brokerage services:

a. Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;

b. May lawfully be used for any of the purposes listed in subdivision (1) of this section by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in subdivision (1) of this section which is under consideration by the government agency with authority to approve the amendment; or

c. Is in good faith intended to be immediately used for any of the purposes listed in subdivision (1) of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

(2) Broker. – A real estate broker licensed pursuant to Chapter 93A of the General Statutes.

(3) Broker services. – Services for which a license issued by the North Carolina Real Estate Commission is required.

(4) Commission. – Any compensation which is due a broker for performance of broker services.

(5) Lien claimant. – A broker claiming a lien pursuant to this Part.
(6) Owner. – The owner of record of commercial real estate.

"**§ 44A-24.3. Commercial real estate lien.**

(a) A broker shall have a lien upon commercial real estate or any interest in that commercial real estate in the amount that the broker is due under either:
(1) A written instrument signed by the owner of an interest in the commercial real estate or signed by the owner's duly authorized agent.
(2) A written instrument signed by a prospective buyer or prospective tenants or signed by their duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate.

(b) The lien under this section shall be available only to the broker named in the instrument signed by the owner, buyer, or tenant or by the agent of the owner, buyer, or tenant.

"**§ 44A-24.4. Lien notice; content.**

(a) A lien notice under this Part shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(b) The lien notice shall include all of the following information:
(1) The name of the lien claimant.
(2) The name of the owner of the commercial real estate.
(3) A description of the commercial real estate upon which the lien is being claimed.
(4) The amount for which the lien is claimed.
(5) The basis for the lien.

"**§ 44A-24.5. When lien attaches to commercial real estate.**

A lien authorized by this Part attaches to the commercial real estate, or an interest in the commercial real estate, when the lien claimant files notice of the lien in the office of the register of deeds of the county in which the real property, or any interest in the real property is located, if such lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to the lien, except that:
(1) In the case of a lease, the claim for lien shall be filed within 90 days after the tenant takes possession of the leased property, unless written notice of the intention to sign the lease is personally served on the person entitled to claim a lien at least 10 days before the date of the intended signing of the lease, then the claim for lien shall be filed before the date indicated for the signing of the lease. The lien attaches for purposes of this subdivision when the claim for lien is filed.
(2) If the lien claimant has a written agreement with a prospective buyer or the prospective buyer's agent as provided in subdivision (2) of subsection (a) of G.S. 44A-24.3, or if the buyer or the buyer's agent has signed a written instrument as described in that subdivision, then the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer of the commercial real estate and files a notice of the lien within 90 days after the purchase or other conveyance or transfer to the buyer in the office of the register of deeds in the county in which the commercial real estate, or any interest in the commercial real estate, is located.

"**§ 44A-24.6. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the register of deeds and a condition occurs that would preclude the lien claimant from receiving compensation under the terms of the written instrument on which the lien is based, the lien claimant shall file and provide the owner of record a written release or satisfaction of the lien.

"**§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.**

Any lien claimant who files a lien on commercial property pursuant to the provisions of this Part shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail or return receipt requested or shall serve a copy of the notice of the lien in accordance with any of provisions for service of process set forth in G.S. 1A-1, Rule 4. The lien is void if the lien claimant does not file the lien as provided in this Part.

"**§ 44A-24.8. Enforcing lien.**

A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of this Part in any court of competent jurisdiction in the county where the property is located by filing a verified petition that the lien has been properly filed. Unless the claim is based upon an option to purchase the commercial real estate, the lien claimant shall commence proceedings within two years after filing the lien, and failure to commence proceedings within the two years shall extinguish the lien. A claim for the same lien extinguished pursuant to this section and G.S. 44A-24.10, may not be asserted in any subsequent proceeding.

"**§ 44A-24.9. Petition; content; parties' foreclosure action; procedure.**

(a) A petition filed pursuant to the provisions of this section and G.S. 44A-24.8 shall contain all of the following:

(1) A statement of the terms of the contract or agreement on which the lien is based.

(2) The date when the contract or agreement was made.

(3) A description of the services performed.

(4) The amount due and unpaid.

(5) A description of the property that is subject to the lien.

(6) Any other facts necessary for a full understanding of the rights of the parties.

(b) The plaintiff shall file the action against all parties which have an interest of record in the commercial real estate. A foreclosure action for a lien claimed pursuant to this Part shall be brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

(c) Valid prior recorded liens or mortgages shall have priority over a lien under this Part.

"**§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending suit within 30 days after service on owner.**

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The provisions of this section shall not extend to any other deadline provided by law or the filing of any pleadings or for the foreclosure of any lien governed by this Part.

"**§ 44A-24.11. Satisfaction or release of lien.**

If a claim for lien has been filed pursuant to the provisions of this Part with the register of deeds and the claim has been paid in full or if the lien claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

"**§ 44A-24.12. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Part, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

"**§ 44A-24.13. Escrow account.**

(a) Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a lien claim under this Part has been filed with the register of deeds and that lien would prevent the closing of a transaction or conveyance, an escrow account shall be established with the clerk of the superior court in the county in which the commercial real estate is located from the proceeds of the transaction or conveyance in an amount equal to one hundred fifty percent (150%) of the amount that is sufficient to release the claim of lien. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to close a transaction. The proceeds held in that escrow account shall be held by the clerk until the parties' rights to the escrowed funds have been determined by either:

(1) Written agreement of the parties.

(2) A final judgment of a court of competent jurisdiction.

(3) Other process to which the parties may agree.

(b) If funds in an amount equal to one hundred fifty percent (150%) of the amount that is sufficient to release the claim of lien have been deposited in the escrow account, the lien claimant shall release the claim for the lien on the real estate, and the lien claimant shall have a lien on the escrowed funds."

SECTION 2. This act becomes effective December 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1516 A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1516
PROPOSED COMMITTEE SUBSTITUTE H1516-PCS50613-RQ-23

Short Title: JDIG Technical Modifications. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. 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~~ grants the Committee may ~~enter into~~award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~The maximum amount of total annual liability for grants ~~for agreements entered into~~awarded in any single calendar 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~~ governing grants awarded during ~~that~~ a single calendar year, could cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that~~ a single 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 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 2. 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 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 full-time employees of the 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~~that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for ~~grants on behalf~~ a grant that includes performance of its related members only if the related members for whom the application is submitted ~~have assigned~~assign 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~~agree 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~~that includes performance by 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~~ grant awarded shall be paid to the ~~applicant business.~~approved grantee business only. 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.

...

(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~~grant awarded 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,~~grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the ~~amount of the grant made~~maximum total lifetime State liability under the ~~agreement during that year.~~grant.

(2) An update on the status of projects under ~~agreements entered into~~grants awarded before the preceding calendar year.

(3) The number and development tier area of eligible positions to be created by projects with respect to which grants ~~were~~ have been 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 to be created by projects with respect to which grants ~~are~~ have been awarded, aggregated and listed in increments of ~~five thousand dollars ($5,000).~~ten thousand dollars ($10,000) or other appropriate increments.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants ~~were~~ have been awarded.

(6) ~~The~~ For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this ~~Part and~~ Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.

(7) The ~~effectiveness of the program in recruiting~~number of awards made to new businesses and the number of awards made to existing, expanding ~~businesses.~~businesses in the preceding calendar year.

(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) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.

(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~~grant awarded 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.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

...

(9) A provision that requires the Committee to ~~amend an agreement~~reduce the amount or term of a grant pursuant to G.S. 143B-437.59.

...

(13) A provision stating that unless the agreement is ~~amended or~~ terminated pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, 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~~ grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.

...

(21) A provision stating that any recapture of a grant and any ~~amendment to an agreement reducing~~reduction in 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.

...."

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(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~~ an annual payroll 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~~program and identifying eligible positions that have been created during the ~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions~~base period 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, 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."

SECTION 5. 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~~agreement, may terminate the ~~agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. 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. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(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:

(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 after the second 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 6. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award new ~~agreements~~ grants expires January 1, ~~2010.~~2016."

SECTION 7. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1516

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

H1516-ARQ-8 [v.1]

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

Date _____,2009

Representative _____

moves to amend the bill on page 1, line 36 through page 2, line 2 by rewriting the lines to read:

"No agreement may be entered into that, when considered together with other existing agreements ~~entered into~~ governing grants awarded during ~~that~~ a single calendar year, could cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that~~ a single calendar year to exceed this amount.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1516
PROPOSED COMMITTEE SUBSTITUTE H1516-CSRQ-23 [v.1]

4/29/2009 4:19:12 PM

Short Title: JDIG Technical Modifications. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. 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~~ grants the Committee may ~~enter into~~award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~The maximum amount of total annual liability for grants ~~for agreements entered into~~awarded in any single calendar 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~~ governing grants awarded during ~~that~~ a single calendar year, could cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that~~ a single 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 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 2. 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 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 full-time employees of the 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~~that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for ~~grants on behalf~~ a grant that includes performance of its related members only if the related members for whom the application is submitted ~~have assigned~~assign 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~~agree 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~~that includes performance by 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~~ grant awarded shall be paid to the ~~applicant business.~~approved grantee business only. 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.

...

(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~~grant awarded 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,~~grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the ~~amount of the grant made~~maximum total lifetime State liability under the ~~agreement during that year.~~grant.

(2) An update on the status of projects under ~~agreements entered into~~grants awarded before the preceding calendar year.

(3) The number and development tier area of eligible positions to be created by projects with respect to which grants ~~were~~ have been 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 to be created by projects with respect to which grants ~~are~~ have been awarded, aggregated and listed in increments of ~~five thousand dollars ($5,000).~~ten thousand dollars ($10,000) or other appropriate increments.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants ~~were~~ have been awarded.

(6) ~~The~~ For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this ~~Part and~~ Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.

(7) The ~~effectiveness of the program in recruiting~~number of awards made to new businesses and the number of awards made to existing, expanding ~~businesses.~~businesses in the preceding calendar year.

(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) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.

(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~~grant awarded 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.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

...

(9) A provision that requires the Committee to ~~amend an agreement~~reduce the amount or term of a grant pursuant to G.S. 143B-437.59.

...

(13) A provision stating that unless the agreement is ~~amended or~~ terminated pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, 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~~ grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.

...

(21) A provision stating that any recapture of a grant and any ~~amendment to an agreement reducing~~reduction in 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.

...."

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(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~~ an annual payroll 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~~program and identifying eligible positions that have been created during the ~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions~~base period 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, 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."

SECTION 5. 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~~agreement, may terminate the ~~agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. 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. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(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:

(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 after the second 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 6. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award new ~~agreements~~ grants expires January 1, ~~2010.~~2016."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1516:
JDIG Technical Modifications

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	**Date:**	April 29, 2009
Introduced by:	Reps. Crawford, Dickson, Gibson	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1516 makes various amendments to the Job Development Investment Grant (JDIG) Program and extends the sunset to 2016 for the JDIG Program.

CURRENT LAW AND BILL ANALYSIS:

Section 1: JDIG Program

Current Law: In 2002, the General Assembly established the JDIG Program to help with job creation in North Carolina. It is administered by the Economic Investment Committee (Committee) which is comprised of five members, the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two private sector members appointed by the N.C. General Assembly. The Committee has the authority to enter into negotiated agreements with businesses to provide grants. Before entering into an agreement with a business, the Committee must find:

- The project will result in a net increase in employment.
- The project will increase opportunities for employment and strengthen the state's economy.
- The project will be consistent with the economic development goals of the state and of the area in which it is located.
- The grant is necessary for the completion of the project in the state.
- The total benefits of the project outweigh its costs and render the grant appropriate for the project.

The Committee may only enter into 25 agreements in each calendar year. The maximum total amount for the agreements each year cannot exceed $15,000,000; but the maximum total amount for the agreements entered into in 2006 was $30,000,000.

Bill Analysis: House Bill 1516 states that the Committee can enter into agreements with businesses rather than "negotiated" agreements. It substitutes the word "grants" for the word "agreements in several places in Section 1 and deletes language referring to the $30,000,000 that was allowed for the grants for the agreements entered into in 2006.

Section 2: Applications and Reports

Current Law: Businesses that apply for a JDIG must include a variety of information on their application including the number of eligible positions proposed to be created and the salaries for the positions; an estimate of the total withholdings; certification that the business will provide health insurance to full-time employees of the project; and information concerning other locations being considered for the projects and the benefits the businesses would obtain if the project were to be located in one of the other locations. A business can apply 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. This can be considered by the Committee only if the related members have assigned any claim of right the related members may have to apply for grants individually during the term of the agreement. If a business applies for a grant on behalf of its related members, the related members can be permitted to meet the qualifications for a grant collectively by participating in the project. The business can decide how to apportion the grant to the related members.

The Committee is required to publish an annual report on JDIG that must include information about the agreements entered into, State liability, new income tax revenue received, and a listing of all businesses making applications for the grants.

Bill Analysis: Section 2 amends the language to state that the Committee is to consider applications that include performance by a business' related member rather than applications "on behalf of" a related member and specifies that any grants awarded are paid only to the approved business.

This section also makes changes to the annual report requirement by requiring the following to be reported: (i) the percentage of withholdings used to determine the amount of the grant; (ii) the annual maximum State liability under the grant and the maximum total lifetime State liability under the grant; (iii) the wage levels of eligible positions to be created and listed in $10,000 or other appropriate increments; (iv) the criteria developed by the Committee for the first annual report and copies of the criteria for subsequent reports and identification of any changes; and (v) the number of awards made to new businesses and the number of awards made to existing businesses that expanded in the preceding calendar year.

Section 3: Community Economic Development Agreements

Current Law: Each community economic development agreement must contain a number of items that include provisions for amending the agreement.

Bill Analysis: Section 3 amends the terms for the community economic development agreement to require that the there must be a provision that requires the Committee to reduce the amount or term of a grant for failure to comply; clarifies that amendments are binding; and specifies that provisions setting out allowed variations do not subject the business to grant reductions.

Section 4: Records of Grant Recipients

Current Law: Businesses must submit reports showing withholdings and during the base period, the business must submit an annual payroll report on the positions created during the preceding calendar year. After the base period, the business must submit an annual report showing the positions that remain filled at the end of each year of the grant.

Bill Analysis: Section 4 requires the business to submit an annual payroll report showing withholdings and identifying positions that were created during the base period.

Section 5: Failure to Comply with the Agreement

Current Law: If the business fails to comply with the conditions or requirements in an agreement, the Committee must amend the agreement to reduce the grant or the term of the agreement or it may terminate the agreement. Any grant reduction is applied to the year following the failure to comply.

Bill Analysis: Section 5 removes the language that states that the reduction of the grant would apply to the following year. Section 5 states that the Committee can reduce the amount or term of a grant by formally approving a motion to reduce a grant according to the policies adopted by the Committee. It would not be necessary to execute an amendment to the grant agreement. Section 5 also adds that if a business fails to maintain employment at the levels stipulated or fails to comply with any condition and if the business is still within the base period established by the Committee, then the Committee must withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in the which the business fails to comply with any conditions.

Section 6: Expiration

Bill Analysis: The authority of the Committee to award new grants is extended to January 1, 2016 from January 1, 2010.

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

HOUSE BILL 1516

Short Title:	JDIG Technical Modifications.	(Public)
Sponsors:	Representatives Crawford, Dickson, Gibson (Primary Sponsors); Faison, Lucas, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations.	

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. 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~~ grants the Committee may ~~enter into~~award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~The maximum amount of total annual liability for grants ~~for agreements entered into~~awarded in any single calendar 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 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 2. 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 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 full-time employees of the 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~~that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for ~~grants on behalf~~ a grant that includes performance of its related members only if the related members for whom the application is submitted ~~have assigned~~assign 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~~agree 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~~that includes performance by 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~~ grant awarded shall be paid to the ~~applicant business.~~approved grantee business only. 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.

...

(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~~grant awarded 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,~~grant, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the ~~amount of the grant made~~maximum total lifetime State liability under the ~~agreement during that year.~~grant.

(2) An update on the status of projects under ~~agreements entered into~~grants awarded before the preceding calendar year.

(3) The number and development tier area of eligible positions to be created by projects with respect to which grants ~~were~~ have been 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 to be created by projects with respect to which grants ~~are~~ have been awarded, aggregated and listed in increments of ~~five thousand dollars ($5,000).~~ten thousand dollars ($10,000) or other appropriate increments.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants ~~were~~ have been awarded.

(6) ~~The~~ For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this ~~Part and~~ Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.

(7) The ~~effectiveness of the program in recruiting~~number of awards made to new businesses and the number of awards made to existing, expanding ~~businesses.~~businesses in the preceding calendar year.

(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) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.

(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~~grant awarded 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.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

...

(9) A provision that requires the Committee to ~~amend an agreement~~reduce the amount or term of a grant pursuant to G.S. 143B-437.59.

...

(13) A provision stating that unless the agreement is ~~amended or~~ terminated pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, 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~~ grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.

...

(21) A provision stating that any recapture of a grant and any ~~amendment to an agreement reducing~~reduction in 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.

...."

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(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~~ an annual payroll 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~~program and identifying eligible positions that have been created during the ~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions~~base period 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, 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."

SECTION 5. 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~~agreement, may terminate the ~~agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. 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. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(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:

(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 after the second 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 6. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award new ~~agreements~~ grants expires January 1, ~~2010.~~2016."

SECTION 7. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1514 A BILL TO BE ENTITLED AN ACT TO EXPAND ECONOMICALLY DISTRESSED COUNTIES TO INCLUDE ALL TIER ONE AND TIER TWO COUNTIES AND TO INCREASE THE MAXIMUM EXPENDITURE OF FUNDS FROM THE INDUSTRIAL DEVELOPMENT FUND.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1514:
IDF Limitation Modifications

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations	**Date:**	April 29, 2009
Introduced by:	Reps. Crawford, Dickson, Gibson	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1514 would increase the maximum rate of the expenditure of funds in the Industrial Development Fund (IDF) to $10,000 per new job and would expand the definition of economically distressed county to include all tier 1 and tier 2 counties for the purposes of the IDF.***

CURRENT LAW: The IDF provides funds to assist local governments of the most economically distressed counties in the State in creating jobs in certain industries. Economically distressed county is defined as a county that has one of the 65 highest rankings under the development tier designation. An eligible industry is defined as a company or person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade. The IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. Other requirements include that the funds have to be used by the city and county governments for projects that directly result in the creation of new jobs and must be expended at a maximum rate of $5,000 per new job created up to a maximum of $500,000 per project.

Within the IDF there is a special account entitled the Utility Account that provides funds to assist the local government units of the counties that have one of the 65 highest rankings under the development tier designation. The funds in the Utility Account can only be used 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. There is no maximum funding amount per new job to be created or per project under the Utility Account.

Under the development tier designation, the 40 most distressed counties are designated as tier 1, the next 40 as tier 2 and the 20 least distressed as tier 3.

BILL ANALYSIS: House Bill 1514 would do all of the following:

- Increase the maximum rate by which funds in the IDF are to be expended by $5,000 to $10,000;
- Expand the definition of economically distressed county as one that is a tier 1 or tier 2 county under the development tier designation; and
- Provide funds from the Utility Account to tier 1 or tier 2 counties instead of just to counties with one of the 65 highest rankings under the development tier designation.

EFFECTIVE DATE: The bill would become effective on July 1, 2009.

H1514-SMRQ-53(e1) v2

HOUSE BILL 1514

Short Title:	IDF Limitation Modifications.	(Public)
Sponsors:	Representatives Crawford, Dickson, Gibson (Primary Sponsors); Faison and Lucas.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations.	

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND ECONOMICALLY DISTRESSED COUNTIES TO INCLUDE ALL TIER ONE AND TIER TWO COUNTIES AND TO INCREASE THE MAXIMUM EXPENDITURE OF FUNDS FROM THE INDUSTRIAL DEVELOPMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. 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)~~ten thousand dollars ($10,000) 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 a county that has one of the 25 highest rankings under G.S. 143B-437.08 or 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.

(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. – Defined in G.S. 105-129.81.

(2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(2a) Company headquarters. – Defined in G.S. 105-129.81.

(3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.

(4) Economically distressed county. – A county that ~~has one of the 65 highest rankings~~is defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied.

(5) Eligible industry. – A company headquarters or a person engaged in the business of air courier services, 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 G.S. 105-129.81.

(9) Reserved.

(10) 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 the counties that ~~have one of the 65 highest rankings~~is defined as a tier one or tier two county 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. This act becomes effective July 1, 2009.

Brenda Lee (Rep. Dickson)

From: Brenda Lee (Rep. Dickson)

Sent: Friday, May 01, 2009 3:19 PM

To: Rep. Deborah K. Ross; Rep. Dan Blue; Rep. William Wainwright; Rep. Marvin Lucas; Rep. Rick Glazier; Rep. Melanie Goodwin

Subject: CORRECTED NOTICE - Special Committee Meeting 5-5-09 - House Commerce, Small Business, and Entrepreneurship

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** wil as follows:

DAY & DATE: Tuesday, May 5, 2009
TIME: 15 minutes after House Session
LOCATION: 1228 LB
COMMENTS: HB 593 Added

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Healthy Families and Healthy Workplaces Act.	Representative Adams Representative Ross Representative Blue Representative Wainwright
HB 593	Change School Starting Date.	Representative Luebke Representative Martha B. Alexander Representative England, M.D. Representative Rapp
HB 698	Fayetteville Tech. Umstead Act Exemption.	Representative Dickson Representative Lucas Representative Glazier Representative Floyd
HB 1113	Opt-out/Atty Solicitations of Representation.	Representative Goodwin

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:10 p.m. on **May 01, 2009**.

Principal Clerk
Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Tuesday, May 5, 2009
TIME: 15 minutes after House Session
LOCATION: 1228 LB
COMMENTS: HB 593 Added

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HB 593	Change School Starting Date.	Representative Luebke Representative Martha B. Alexander Representative England, M.D. Representative Rapp
HB 698	Fayetteville Tech. Umstead Act Exemption.	Representative Dickson Representative Lucas Representative Glazier Representative Floyd
HB 1113	Opt-out/Atty Solicitations of Representation.	Representative Goodwin

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:10 p.m. on **May 01, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

Brenda Lee (Rep. Dickson)

From: Brenda Lee (Rep. Dickson)
Sent: Friday, May 01, 2009 1:35 PM
To: Rep. Deborah K. Ross; Rep. Dan Blue; Rep. William Wainwright; Rep. Marvin Lucas; Rep. Rick Glazier; Rep. Melanie Goodwin
Subject: Special Committee Meeting Notice 05-05-2009 - House Commerce, Small Business, and Entrepreneurship

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will r follows:

DAY & DATE: Tuesday, May 5, 2009
TIME: 15 minutes after House Session
LOCATION: 1228 LB
COMMENTS: Special Called Meeting

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 177	Healthy Families and Healthy Workplaces Act.	Representative Adams Representative Ross Representative Blue Representative Wainwright
HB 698	Fayetteville Tech. Umstead Act Exemption.	Representative Dickson Representative Lucas Representative Glazier Representative Floyd
HB 1113	Opt-out/Atty Solicitations of Representation.	Representative Goodwin

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:30 p.m. on **May 01, 2009.**

Principal Clerk
Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

05/04/2009

AGENDA

HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Tuesday, May 5, 2009
5:10 P.M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 177	Healthy Families and Healthy Workplaces Act (FOR DISCUSSION ONLY)	Rep. Adams Rep. Ross Rep. Blue Rep. Wainwright
HB 593	Change School Starting Date	Rep. Luebke Rep. Alexander Rep. England, M.D. Rep. Rapp
HB 698	Fayetteville Tech. Umstead Act Exemption	Rep. Dickson Rep. Lucas Rep. Glazier Rep. Floyd
HB 1113	Opt-out/Atty Solicitations of Representation	Rep. Goodwin

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Tuesday, May 5, 2009
5:10 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, in Room 1228, Legislative Building at 5:10 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allred, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Harrell, Holloway, McGee, Mills, Owens, Pierce, Rapp, Samuelson, Steen, and Wray. Staff Counsel Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 698 – A BILL TO BE ENTITLED AN ACT TO AMEND THE UMSTEAD ACT TO PERMIT FAYETTEVILLE TECHNICAL COMMUNITY COLLEGE TO PROPERLY TAKE ADVANTAGE OF CERTAIN INNOVATIVE TECHNOLOGIES. Sponsor(s): Representatives Dickson, Lucas, Glazier, and Floyd
Since Representative Dickson was the primary sponsor of the bill, she asked Representative Goforth to preside. Representative Dickson presented the bill. The bill would create an exception to the Umstead Act to permit the use of personnel, equipment and facilities relating to Interactive Three-Dimensional (Advanced Utilization) technology and Tele-presence technology at Fayetteville Technical Community. She explained that the bill would allow Fayetteville Technical Community College to work with the private sector for long-time exemptions. Representative Dickson gave as an example of the public/private educational partnerships the NCSU Centennial Campus which provides opportunities for growth of new industries and spin-off entrepreneurial activities in North Carolina. She provided handouts and answered questions from Committee members. Representative Blackwood moved for a favorable report. The motion passed.

HB 1113 - A BILL TO BE ENTITLED AN ACT TO ALLOW INDIVIDUALS CHARGED WITH TRAFFIC OFFENSES OR INVOLVED IN REPORTABLE ACCIDENTS TO CHOOSE NOT TO BE CONTACTED BY ATTORNEYS OFFERING LEGAL REPRESENTATION. Sponsor: Representative Goodwin
Representative Harrell moved to adopt the proposed committee substitute, and it was adopted. Representative Goodwin presented the bill. The bill provides that the state will make modifications to the uniform ticket and provide a place for citizens to opt out of

getting attorney solicitations when involved in reportable incidents. Discussion followed. Representative Owens moved for a favorable report to the proposed committee substitute, unfavorable to the original bill, with a re-referral to the Committee on Judiciary I. The motion passed.

HB 593 – A BILL TO BE ENTITLED AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS.

Sponsor(s): Representatives Luebke, M. Alexander, England, Rapp

There were two amendments offered as follows: Amendment #1 - Representative Wilkins moved to amend the bill on page 1, line 32 changing the numbers after the word "the" to 2010-2011. Representative Blackwood moved to adopt Amendment #1, and it was adopted. Amendment # 2 – Representative Blackwell moved to amend the bill on page 1, line 2 by rewriting the line to read: "AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS AND TO REQUIRE LOCAL OF EDUCATION TO CONDUCT A PUBLIC HEARING BEFORE DETERMINING THE OPENING AND CLOSING DATES FOR THE PUBLIC SCHOOLS.", and on page 1, line 6 by rewriting the line to read: "of opening and closing the public schools under subdivision (a)(1) of this section after conducting a public hearing. Except for". Representative Blackwell said the purpose of the amendment was to try to address the concerns of parents in the community that they at least be afforded the opportunity by the School Board to state their views on the school calendar before the LEA makes that decision. Representative Wilkins moved for adoption of Amendment #2, and it was adopted. Representative Luebke presented the bill. He said the intent of the bill was to provide flexibility for LEAs to make a decision as to when best to start the school year as long as it is no earlier than the second Monday in August. He said one of the serious problems with the current law which does not allow schools to start until August 25, is that the end of course tests do not come before Christmas. Rather, there is a stop, then the Christmas break, then the end of course exams. Because of that lag in time the students do not do well on the end of course exams which can hurt their grade point averages. It is disruptive to the academic year. Representative England said the existing law offers an option for schools to begin after August 25. The bill would change that option, increase the flexibility, and move it back to the second Monday in August. In his judgment he felt that flexibility of local boards of education, decision-making at the local level, should be the appropriate way to handle school the school calendar. Representative Rapp asked for the Committee's support of the bill to allow counties (especially western counties) to open schools two weeks earlier whether or not they are on a block schedule. He said that there are enough snow days to warrant the request for flexibility in the school calendar. Connie Wilson, representing NC Travel Industry Association, appeared before the Committee and opposed the bill. Leanne Winner, represented the NC School Boards Association and spoke on behalf of the NC Association of School Administrators, NCAE, and the Professional Educators of NC. She said that all four of those organizations supported the bill and asked for the Committee's support. Discussion followed. Representative Goforth moved for a favorable report of HB 593. The Chair called for a roll call vote as follows: **Yes**= Representatives Adams, Braxton, Dickson, England, Farmer-Butterfield, Goforth, Harrell, Holloway, Mills, Pierce, Rapp, Wilkins, and Wray. **No**= Representatives Allred, Avila, Blackwell, Blackwood, Boles, Brown, Frye,

Gillespie, McGee, Owens, Samuelson, Starnes, Steen, and Stewart. The motion failed by a vote of **13=Yes** and **14=No.**

The following bill was for discussion only:

HB 177 – A BILL TO BE ENTITLED AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY ENSURING THAT ALL WORKERS HAVE PAID SICK DAYS TO ADDRESS THEIR OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR FAMILIES.
Sponsors: Representatives Adams, Ross, Blue, and Wainwright
Representative Adams presented the bill. She explained that the bill was about workers and employers as well. She said that 1.6 million of North Carolina's workers (almost one-half of the work force) do not have access to even one paid sick day per year. HB177 would guarantee workers throughout North Carolina a maximum of 7 paid sick days annually. She said the bill had wide support and had been discussed for quite some time. Over 30 organizations and an extraordinary amount of public support had been levied for the bill. A poll conducted by AARP in North Carolina revealed that 79% of respondents said that employers should be required to provide a minimum number of paid sick days for their employees. She said that paid sick days would benefit workers, their families, and employers. And, providing for paid sick days would allow ill workers and their children to recover more quickly; lower the healthcare cost to the worker and the employer; reduce employee absences; and improve worker productivity. Diana Hatch, AARP NC State President and a member of the older Women's League Triangle Chapter appeared before the Committee in support of the bill. Jann Goldenthal, Director, Temple Beth Or Pre-school spoke in support of the bill. Jeannine Sato, MomsRising.org (3,500 member on-line organization for moms in NC) spoke in support of the bill. Joe Stewart, representing the North Carolina Chamber of Commerce spoke in opposition of the bill. Greg Thompson, State Director of the National Federation of Independent Business representing 7,200 small business owners in North Carolina spoke in opposition to the bill. Bill Rowe, NC Justice Center provided statistics on the cost of workers being away from work. Discussion followed. As a former business owner, Representative Cole said to mandate this would create havoc within small business enterprise in North Carolina. He said this bill is going in the wrong direction for small business owners. Representative Adams, also a small business owner, said this is a serious issue. It is about businesses and workers. She asked Committee members to continue to think about all that had been discussed and said that we should be concerned about people who are trying to earn a living, but also employers have to be concerned about the productivity of businesses as well. She stated that sick people in the work place, schools, and elsewhere contaminate others, and this becomes a public health issue.

The meeting adjourned at 6:30 p.m.

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

Comm, Small Bus + Entrepreneurship — 5/5/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Dalton	NCRMA
Amy McConkey	Smith Anderson
Amy Schilder	MWC
John Goodman	NC Chamber
Evelyn Hawthorne	PBNC
[illegible]	NCMBA
Scott Mason	Lowe's
[illegible]	CMC
Lynn Horne	NCTA
M. Bryant	P.O. Box 5152 / Kinston, NC 28503
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

Small Biz; Entrepreneurship — May 5, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Lowry	NC Utility Contractors Assn
Joel Mainard	CMS
Conor Brockett	ncsba
Paula A. Wolf	NC NOW
Soren Schmidt	Action for Children NC
Chuck [illegible]	SEANC
Jeff Mixon	Civitas
Bob Ford	NC Poultry Fed
Connie Wilson	NCTIA
Preston Howard	NCIC
Eric Boyle	NCAE

VISITOR REGISTRATION SHEET

Commerce, Small Bus. and Entrepreneurship 5/5/09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	NC Chamber
Jann Goldenthal	Temple Beth Or Preschool 5315 Creedmoor Rd. Raleigh
Jeff Shaw	NC Justice Center
Polly Williams	Triangle OWL
ADAM DILLAHUNT	NCJC
Mary B McMillan	NC AFL-CIO
Dick Hatch	NC AARP
Diana D. Hatch	NC AARP
Jeannine Sato	MomsRising.org
Louisa Warren	NC Justice Center
Bill Rowe	NC Justice Center
Doll Taylor	NCAJ

VISITOR REGISTRATION SHEET

Comm, Small Bus. & Entrepreneurship — 5/5/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	Weyerhaeuser
Gregg Thompson	NFIB
Daniel Baum	K+L Gates
Jim Stegall	NCPS.
Leanne Winner	NCSBA

House Pages

Commerce, Small Business & Entrepreneurship 5/5/09

Name of Committee: _____ **Date:** _____

1. Name: _____ Starnes

   County: _____

   Sponsor: _____

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

Sgt-At-Arms

1. Name: Judy Turner
2. Name: [redacted]
3. Name: Rod Finger
4. Name: Toussant Avent

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 698 A BILL TO BE ENTITLED AN ACT TO AMEND THE UMSTEAD ACT TO PERMIT FAYETTEVILLE TECHNICAL COMMUNITY COLLEGE TO PROPERLY TAKE ADVANTAGE OF CERTAIN INNOVATIVE TECHNOLOGIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 698

Short Title:	Fayetteville Tech. Umstead Act Exemption.	(Public)
Sponsors:	Representatives Dickson, Lucas, Glazier, E. Floyd (Primary Sponsors); and Brisson.	
Referred to:	Education, if favorable, Commerce, Small Business, and Entrepreneurship.	

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UMSTEAD ACT TO PERMIT FAYETTEVILLE TECHNICAL COMMUNITY COLLEGE TO PROPERLY TAKE ADVANTAGE OF CERTAIN INNOVATIVE TECHNOLOGIES.

The General Assembly of North Carolina enacts:

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

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

...

(3e) The use of personnel, equipment, and facilities relating to Interactive Three Dimensional (Advanced Visualization) technology and Tele-presence technology at Fayetteville Technical Community College. Proceeds generated must be used either to continue the function of this program or to support the educational mission of the school."

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

HANDOUT #1

General Assembly of North Carolina
Session 2009

HB 698

Short Title: Fayetteville Technical Community College Umstead Act Exemption

Sponsors: Representatives Dickson, Lucas, Glazier, E. Floyd (Primary Sponsors) and Brisson

Referred to: Education, if favorable, Commerce, Small Business, and Entrepreneurship

Amends the Umstead Act to permit FTCC to use personnel, equipment, and facilities relating to Interactive Three Dimensional (Advanced Visualization) (i3D) technology and Tele-presence technology at Fayetteville Technical Community College. Proceeds generated must be used either to continue the function of this program or to support the educational mission of the school.

- Fayetteville Technical Community Colleges seeks an exemption to create robust interactive three-dimension educational/training programs to be developed for North Carolina at all educational levels.

- An exemption to the Umstead Act would create a new revenue stream for the college which would be used to support the development and growth of i3D instructional materials, technology programs or support other college functions that support new industry growth, entrepreneurial expansion and job development beneficial to all.

- The additional revenue stream would allow for more rapid expansion of both the curricula content, development of instructional personnel, and deployment in the service area, region and state that could enhance the workforce and economic development opportunities with business, industry and public sector organizations.

- New economic opportunities abound with i3D educational content and equipment that can prove to be a powerful economic development tool for the creation, attraction and retention of business/industry to the rural and metropolitan regions of North Carolina.

- The exemption to the Umstead Act would permit the college to engage directly with business and industry to provide advanced technical resources on a 'fee for service' basis to enhance recruitment and/or expansion of economic and workforce development in North Carolina. That capability could provide:

    - The ability to create a 'virtual copy' (i3D copy) of equipment

- Example: create gas chromatograph device used in the biotech industry to permit community colleges to provide pre-employment training for careers in biotechnology
- Example: create a surgical suite in a hospital to permit the pre-employment training of surgical technicians that prepares more realistic educational scenarios for students

- The ability to create training videos using 'green screening' and i3D objects for pre or post employment training for business and industry
  - Example: incorporate an i3D object into a video and insert via 'green screen' a subject matter expert into the training
  - Example: create a simulated-based training scenario using both 'green screen' images and i3D objects to provide both pre and post employment training

- The ability to create a virtual (i3D) process-flow for a manufacturing or production industry.
  - Example: create a replication of the processing flow for a pharmaceutical manufacturer to provide pre or post employment training designed to reduce errors in production.
  - Example: create a replication of the start-up or shut-down of a manufacturing process to provide training via virtual reality
  - Example: create a replication of the 'valve pack' for a manufacturing company to train, maintain and troubleshoot the pressurized system that controls for advanced automated equipment/machinery

- The ability to use state-of-the-art interactive video technologies (Tele-presence) to provide delivery of subject matter experts into the classroom for advanced level training or trouble-shooting.
  - Example: bring an aerospace engineer as the training expert for aviation/aerospace manufacturer to train the workforce – while displaying an i3D virtual version of the part/equipment being discussed in the training room at multiple locations statewide

North Carolina has the ability to lead or be at the leading edge of the industries' (NOTE: The Umstead Act was enacted to prevent the government using public resources in competition with private businesses. Here, it is unlikely that we would be in competition with business and industry because we are concentrating on the creation of educational, training and community support services/materials that could benefit students with innovative curricula, robust classroom technology that enhances the educational experience for North Carolinians.)

REPRESENTATIVE MARGARET H. DICKSON
NORTH CAROLINA HOUSE OF REPRESENTATIVES
44TH DISTRICT

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2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1113 A BILL TO BE ENTITLED AN ACT TO ALLOW INDIVIDUALS CHARGED WITH TRAFFIC OFFENSES OR INVOLVED IN REPORTABLE ACCIDENTS TO CHOOSE NOT TO BE CONTACTED BY ATTORNEYS OFFERING LEGAL REPRESENTATION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1113
PROPOSED COMMITTEE SUBSTITUTE H1113-PCS30351-RN-19

Short Title: Opt-Out/Atty Solicitations of Representation. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW INDIVIDUALS CHARGED WITH TRAFFIC OFFENSES OR INVOLVED IN REPORTABLE ACCIDENTS TO CHOOSE NOT TO BE CONTACTED BY ATTORNEYS OFFERING LEGAL REPRESENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-148(b) reads as rewritten:

"(b) The chief district judges shall prescribe a multicopy uniform traffic ticket and complaint for exclusive use in each county of the ~~State not later than December 31, 1970.~~ State. Not later than December 1, 2009, the multicopy uniform traffic ticket and complaint shall include an opportunity for the person charged with a traffic offense specifically to decline to receive direct solicitations or offers of legal representation related to that offense."

SECTION 2. G.S. 20-166.1(e) reads as rewritten:

"(e) Investigation by Officer. – The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates a reportable accident, whether at the scene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident. The report must also indicate, for each person involved in the reportable accident, whether that individual specifically declines to receive direct solicitations or offers of legal representation related to the reportable accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When a person injured in a reportable accident dies as a result of the accident within 12 months after the accident and the death was not reported in the original report, the law enforcement officer investigating the accident must file a supplemental report that includes the death."

SECTION 3. Sections 1 and 2 of this act apply to traffic offenses and reportable accidents occurring on or after December 1, 2009. The remainder of this act is effective when it becomes law.

HOUSE BILL 1113:
Opt-Out/Atty Solicitations of Representation

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	May 5, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H1113-CSRN-19		Committee Co-Counsel

SUMMARY: House Bill 1113 would allow individuals charged with traffic offenses or involved in reportable accidents to choose not to be contacted by attorneys offering legal representation. The Proposed Committee Substitute makes one technical change to the effective date ("The remainder of this act is effective when it becomes law") to comply with the General Assembly's drafting convention of providing an effective date for each section of a bill.

CURRENT LAW AND BILL ANALYSIS:

Under current law, the chief district judges must prescribe a multicopy uniform traffic ticket and complaint for exclusive use in each county of the State.

Section 1 would require that the traffic ticket and complaint must allow the person charged with a traffic offense to decline to receive direct solicitations or offers of legal representation related to that offense. The chief district judges must make this change no later than December 1, 2009.

Jnder current law, a law enforcement officer who investigates a reportable accident, whether at the ɔcene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault.

Section 2 would require an officer's accident report to also indicate, for each person involved in the reportable accident, whether that individual declines to receive direct solicitations of offers of legal representation related to the reportable accident.

EFFECTIVE DATE: Section 1 is effective when it becomes law. Section 2 becomes effective December 1, 2009. Both sections apply to traffic offenses and reportable accidents occurring on or after December 1, 2009. The remainder of this act is effective when it becomes law.

H1113-SMRN-48(CSRN-19) v2

HOUSE BILL 1113

Short Title:	Opt-Out/Atty Solicitations of Representation.	(Public)
Sponsors:	Representatives Goodwin; and Harrison.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW INDIVIDUALS CHARGED WITH TRAFFIC OFFENSES OR INVOLVED IN REPORTABLE ACCIDENTS TO CHOOSE NOT TO BE CONTACTED BY ATTORNEYS OFFERING LEGAL REPRESENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-148(b) reads as rewritten:

"(b) The chief district judges shall prescribe a multicopy uniform traffic ticket and complaint for exclusive use in each county of the ~~State not later than December 31, 1970.~~ State. Not later than December 1, 2009, the multicopy uniform traffic ticket and complaint shall include an opportunity for the person charged with a traffic offense to specifically decline to receive direct solicitations or offers of legal representation related to that offense."

SECTION 2. G.S. 20-166.1(e) reads as rewritten:

"(e) Investigation by Officer. – The appropriate law enforcement agency must investigate a reportable accident. A law-enforcement officer who investigates a reportable accident, whether at the scene of the accident or by subsequent investigations and interviews, must make a written report of the accident within 24 hours of the accident and must forward it as required by this subsection. The report must contain information on financial responsibility for the vehicle driven by the person whom the officer identified as at fault for the accident. The report must also indicate, for each person involved in the reportable accident, whether that individual specifically declines to receive direct solicitations or offers of legal representation related to the reportable accident.

If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to the Division within 10 days after receiving the report.

When a person injured in a reportable accident dies as a result of the accident within 12 months after the accident and the death was not reported in the original report, the law enforcement officer investigating the accident must file a supplemental report that includes the death."

SECTION 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective December 1, 2009. Sections 1 and 2 apply to traffic offenses and reportable accidents occurring on or after December 1, 2009.

ROLL CALL VOTE

13 YES 14 NO = 27 (TOTAL) **HB# 593** SB# _____

HOUSE STANDING COMMITTEE ON Commerce, Small Business and Entrepreneurship 05-05-09

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
X		ADAMS	X		RAPP
		ALLEN		X	SAMUELSON
	X	ALLRED		X	STARNES
	X	AVILA		X	STEEN
	X	BLACKWELL		X	STEWART
	X	BLACKWOOD			TARLETON
	X	BOLES			WARREN
X		BRAXTON	X		WILKINS
	X	BROWN	X		WRAY
		CARNEY			
		COLE			
X		DICKSON			
X		ENGLAND			
X		FARMER-BUTTERFIELD			
		FLOYD			
	X	FRYE			
	X	GILLESPIE			
X		GOFORTH			
X		HARRELL, T.			
X		HOLLOWAY			
	X	McGEE			
X		MILLS			
	X	OWENS			
X		PIERCE			

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 593 DATE MAY 05, 89

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Wilkins
~~Sen.~~)

1 moves to amend the bill on page 1, line 32
2 ( ) WHICH CHANGES THE TITLE
3 by changing the Numbers after the
4 Word "the" to 2010-2011
5
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 593

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

H593-ARQ-9 [v.2]

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

Date _____,2009

Representative Blackwell

moves to amend the bill on page 1, line 2 by rewriting the line to read:
"AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO CONDUCT A PUBLIC HEARING BEFORE DETERMINING THE OPENING AND CLOSING DATES FOR THE PUBLIC SCHOOLS."; and on

page 1, line 6 by rewriting the line to read:
"of opening and closing the public schools under subdivision (a)(1) of this ~~section.~~ section after conducting a public hearing. Except for".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 593:
Change School Starting Date

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 5, 2009
Introduced by:	Reps. Luebke, M. Alexander, England, Rapp	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 593 would change the school start date for students from no earlier than August 25 to no earlier than the second Monday in August.

CURRENT LAW: G.S. 115C-84.2(d) establishes the opening and closing dates for public schools. Except for year-round schools, the opening date for students must not be before August 25 and the closing date for students must not be after June 10. The State Board of Education may grant waivers from the August 25 and June 10 opening and closing dates for the following reasons:

- A showing of good cause. "Good cause" means schools in the local school administrative unit have been closed 8 days per year during any 4 of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.
- An educational purpose. "Educational purpose" means that a local school administrative unit establishes a need to adopt a different calendar for:
    - a specific school to accommodate a special program offered generally to students in that school;
    - a school that primarily serves a special population of students; or
    - a defined program within a school.

The State Board may grant the waiver for an educational purpose to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the August 25 and June 10 opening and closing dates. The law prohibits the use of a waiver request for an educational purpose to accommodate system-wide class scheduling preferences.

BILL ANALYSIS: House Bill 593 would amend the school calendar law (G.S. 115C-84.2) by moving the school opening date for students to no earlier than the second Monday in August. This change would make the school opening date for students about two weeks earlier than the current no earlier than August 25 requirement.

EFFECTIVE DATE: This act would become effective when it becomes law and would apply beginning with the 2009-2010 school year.

BACKGROUND: Beginning in 1943, North Carolina statutes have required a 180 day public school year. Prior to 2004, local boards of education determined the opening and closing dates of the school year, with no dates specified in statute. S.L. 2004-180 amended the statute to establish August 25th as the earliest school start date and June 10th as the latest school closing date for students. The new law also allows the State Board of Education to grant waivers upon a showing of good cause or educational purpose by the local school administrative unit.

Please see the back of this page for additional information on the school calendar.

H593-SMRQ-59(e1) v1

**Dr. Shirley Iorio, Policy Analyst for House Education, significantly contributed to this summary.*

Public School Calendar

G.S. 115C-84.2 is the statute which established the parameters of the school calendar. Local boards of education must adopt a school calendar which meets the following criteria:

- Must be 215 days, all of which fall within the fiscal year.
- Must include a minimum of 180 days and 1000 hours of instruction covering at least 9 calendar months.
- Must include a plan for making up days and instructional hours missed due to inclement weather.
- Must include a minimum of 10 annual vacation leave days.
- Must include the same or an equivalent number of legal holidays occurring within the school calendar year as those designated by the State Personnel Commission for state employees.
- Must include five days designated for use as protected teacher workdays.

All other days must be scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purpose.

The total number of teacher workdays for teachers employed for a 10 month term may not exceed 195 days.

The calendar must include at least 42 consecutive days when teacher attendance is not required unless the school is a year-round school or the teacher is employed for an excess of 10 months.

School may not be held on Sundays.

Veteran's Day must be a holiday for all public school personnel and students.

Except for year-round schools, the opening date of school for students may not be before August 25, and the closing date for students may not be after June 10. The statute provides for waivers by the State Board of Education from this requirement in certain circumstances related to emergency situations or educational purposes.

Teacher Workdays in the School Calendar

The statute includes the following specifics related to teacher workdays.

The calendar must include 5 protected workdays for teachers to complete instructional and administrative duties. The LEA may not impose additional tasks on teachers on those days. One of the 5 days must be scheduled at the beginning of the school year, and one must be scheduled at the end of each academic quarter.

Other teacher workdays may be scheduled in the local board's discretion.

H 1

HOUSE BILL 593

Short Title:	Change School Starting Date.	(Public)
Sponsors:	Representatives Luebke, M. Alexander, England, Rapp (Primary Sponsors); Carney, Fisher, Goforth, Hall, Harrison, Insko, R. Warren, and Weiss.	
Referred to:	Education, if favorable, Commerce, Small Business, and Entrepreneurship.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before ~~August 25, and~~ the second Monday in August; the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

HOUSE BILL 177

Short Title:	Healthy Families and Healthy Workplaces Act.	(Public)
Sponsors:	Representatives Adams, Ross, Blue, Wainwright (Primary Sponsors); K. Alexander, M. Alexander, Bell, Bryant, Cotham, Faison, Fisher, Glazier, Goodwin, Harrison, Hughes, Insko, Jeffus, Jones, Lucas, Luebke, Mackey, Martin, Pierce, Underhill, Weiss, Womble, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Health.	

February 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY ENSURING THAT ALL WORKERS HAVE PAID SICK DAYS TO ADDRESS THEIR OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR FAMILIES.

Whereas, nearly every worker in North Carolina is likely to need, during any given year, time off to attend to his or her own illness or that of an immediate family member, or for routine medical care; and

Whereas, when parents are available to care for their children who become sick, the children's recovery is faster, more serious illnesses are prevented, and the children's overall health is improved; and

Whereas, parents who cannot afford to miss work must send children with a contagious illness to child care or school, contributing to the high rate of infections in child care centers and schools; and

Whereas, over 100,000 North Carolina women reported physical abuse by a husband or boyfriend, and there were 75 domestic violence-related homicides in 2007; and

Whereas, victims of domestic violence need time off to care for their health or to find solutions, such as a restraining order or housing, to avoid or prevent abuse and are forced to lose days of paid employment; and

Whereas, providing employees time off to attend to their own health care needs ensures that they will be healthier and more efficient employees in the long run; and

Whereas, there are many workers in North Carolina who are not entitled to any paid sick time to care for their own health needs or the health needs of members of their families; and

Whereas, low-income workers are significantly less likely to have paid sick time than other members of the workforce; and

Whereas, providing minimal paid sick time is affordable for employers and good for business; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 3A.

"Healthy Families and Healthy Workplaces Act.

"**§ 95-31.1. Short title and legislative purpose.**

(a) This Article shall be known and may be cited as the "Healthy Families and Healthy Workplaces Act."

(b) The public policy of this State is declared as follows: The health and safety needs of employees and their families and the protection of employees from losing their jobs and pay while they seek medical care for themselves and their family members are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

"**§ 95-31.2. Definitions.**

(a) The following definitions apply in this Article:

(1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or child of a parent standing in loco parentis who is under 18 years of age, or 18 years of age or older but incapable of earning wages because of a mental or physical incapacity.

(2) Domestic violence. – As defined in G.S. 50B-1.

(3) Employee. – As defined by G.S. 95-25.2(4).

(4) Employ. – As defined by G.S. 95-25.2(3).

(5) Employer. – As defined by G.S. 95-25.2(5).

(6) Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 to 2654 inclusive, as it may be amended.

(7) Health care provider. –

a. A doctor of medicine or osteopathy licensed to practice medicine in the State.

b. A physician assistant licensed in this State.

c. A family nurse practitioner licensed in this State.

(8) Immediate family member. – An employee's spouse, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, foster, adoptive, step-, half-, or in-law relationship.

(9) Parent. – A biological, foster, stepparent, or adoptive parent of an employee or an employee's spouse, or other person who stood in loco parentis during the childhood of an employee or employee's spouse.

(10) Paid sick time or paid sick days. – Time that is (i) compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and (ii) provided by an employer to an employee for the purposes described in G.S. 95-31.4(b) of this Article.

(11) Sexual assault. – As defined in Chapter 14 of the General Statutes.

(12) Stalking. – As defined in Chapter 14 of the General Statutes.

(13) Small business. – An employer who employs 10 or fewer employees during 20 or more calendar workweeks in the current or preceding calendar year.

"**§ 95-31.3. Exemptions.**

(a) The provisions of this section do not apply to any bona fide volunteers in any organization where an employer-employee relationship does not exist.

(b) The provisions of this section do not apply to any person exempted from the Wage and Hour Act under G.S. 95-25.14(a)(2) through (8), G.S. 95-25.14(b), G.S. 95-25.14 (b1), G.S. 95-25.14(c), and G.S. 95-25.14(e), except that domestic workers are exempted only if they are employed in the place of residence of their employer.

"**§ 95-31.4. Accrual of paid sick time.**

(a) Except as provided by G.S. 95-31.3, any employee who works in this State and who must be absent from work for the reasons set forth in G.S.95-31.5(a) shall be entitled to paid sick time.

(b) Paid sick time as provided in this section shall begin to accrue at the commencement of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours worked. Paid sick time may be used as accrued, or be loaned by the employer, at its discretion, to the employee in advance of accrual. Unless the employer and employee agree to designate otherwise, for periods of paid sick time that are less than a normal workday, the time shall be counted on an hourly basis or the smallest increment that the employer's payroll system uses to account for absences or use of leave.

(c) For employees of small businesses, there shall be a limit of 32 hours of accrued paid time in a calendar year. For employees of other employers, there shall be a limit of 56 hours of accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over from year to year but is limited to the aforementioned limits.

(d) When there is separation from employment and the employee is rehired within 90 days of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue additional sick time at the recommencement of employment.

"**§ 95-31.5. Use of paid sick time.**

(a) Paid sick time shall be provided to an employee by an employer for any of the following reasons:

(1) To care for the employee's immediate family member who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, preventative medical care, or a routine medical appointment, unless the care is covered under federal law.

(2) To care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, preventative medical care, or a routine medical appointment, unless the care is covered under federal law.

(3) To allow an employee to address the psychological, physical, or legal effects on himself or herself, or an immediate family member, of domestic violence, sexual assault, or stalking.

(b) An employer may require certification of the qualifying illness, injury, health condition, or violence when a paid sick time period covers more than three consecutive workdays. Any reasonable documentation signed by a health care provider involved in following or treating the illness, injury, or health condition, and indicating the need for the amount of sick days taken, shall be deemed acceptable certification. Acceptable certification of domestic violence, sexual assault, or stalking may include: (i) law enforcement, court or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program; or (iii) documentation from a religious, medical, or other professional from whom assistance was sought in dealing with the alleged domestic violence, sexual offense, or stalking.

(1) The employer shall not require certification from a health care provider employed by the employer. The employer shall not delay the commencement of time taken for purposes of subsection (a) of this section or pay for this period on the basis that the employer has not yet received the certification. Nothing in this section shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2.

(2) An employer may not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's medical condition as a condition of providing paid sick time under this Article. If an employer possesses health information or information pertaining to domestic violence, sexual assault, or stalking about an employee or employee's immediate family member, such information shall be treated as confidential and not disclosed except to affected employee or with the permission of affected employee.

(c) When the use of sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer.

(d) An employer may not require, as a condition of providing sick time under this Act, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.

(e) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick days that have not been used.

(f) Nothing in this section shall be construed to discourage employers from adopting or retaining paid sick time policies more generous than policies that comply with the requirements of this section, and nothing in this section shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater sick time leave rights to employees than the rights established under this section.

(g) This Act provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, agreement, or standard that provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that extends other protections to employees.

(h) Employers who have a paid time off leave policy shall not be required to modify that policy, if that policy offers an employee the option, at the employee's discretion, to take paid sick time that is at least equivalent to the amounts and for the same purposes and under the same conditions as provided under this section.

"**§ 95-31.6. Notification, posting, and records.**

Employers shall give notice that employees are entitled to paid sick time, the amount of paid sick time, and the terms of its use guaranteed under this section, that retaliation against employees who request or use paid sick time is prohibited, and that each employee has the right to file a complaint with the Commissioner of Labor or in the General Court of Justice if sick time as required by this Article is denied by the employer or the employee is retaliated against for requesting or taking paid sick time. Employers may comply with this section by supplying each of their employees with a notice in English and Spanish that contains the information required by this section or by displaying a poster in a conspicuous and accessible place in each establishment where the employees are employed which contains in English and in Spanish all information required by this section.

"**§ 95-31.7. Enforcement.**

(a) The Commissioner shall enforce and administer the provisions of this Article, and the Commissioner or his or her authorized representative is empowered to hold hearings and to institute civil proceedings hereunder.

(b) The Commissioner or his or her authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses

and the production of papers, books, accounts, records, payrolls, and documents, and take depositions and affidavits in any proceeding hereunder.

(c) Any employer who violates the provisions of this Article shall be liable to the employee or employees affected in the amount of their unpaid sick time as the case may be, plus interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due.

(d) In addition to the amounts awarded pursuant to subsection (c) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (c) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (c) of this section.

(e) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(f) The court, in any action brought under this Article, may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(g) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (e) of this section.

(h) Actions under this Article must be brought within two years pursuant to G.S. 1-53.

(i) The rights and remedies created by this Article are supplementary to all existing common law and statutory rights and remedies.

"**§ 95-31.8. Rules.**

The Commissioner of Labor shall adopt rules to implement this Article.

"**§ 95-31.9. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

SECTION 2. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
   a. Chapter 97 of the General Statutes.
   b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
   c. Article 2A of Chapter 74 of the General Statutes.
   d. G.S. 95-28.1.
   e. Article 16 of Chapter 127A of the General Statutes.
   f. G.S. 95-28.1A.
   g. Article 52 of Chapter 143 of the General Statutes.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.

(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5."

SECTION 3. Section 1 and Section 2 of this act become effective January 1, 2010, apply only to covered employment on or after that date and do not apply to any collective bargaining agreement entered into before January 1, 2010, that is still in effect on that date. The remainder of this act is effective when it becomes law.

Brenda Lee (Rep. Dickson)

From: Brenda Lee (Rep. Dickson)

Sent: Monday, May 04, 2009 2:01 PM

To: Rep. Tim Moore; Rep. Phillip Haire; Rep. Rick Glazier; Rep. William Wainwright; Rep. Julia Howard; Rep. Cary Allred; Rep. Grier Martin; Rep. Marvin Lucas; Rep. Deborah K. Ross; Rep. Bill Faison; Rep. Larry Bell; Rep. Beverly Earle; Rep. Carolyn H. Justice; Rep. Robert Grady; Rep. Bill Owens; Rep. Pryor Gibson; Rep. Linda Johnson; Rep. Carolyn Justus; Rep. William Brisson

Subject: 2nd Corrected Committee Notice 5-6-09 - House Commerce, Small Business, and Entrerpreneurship Committee

2nd Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** wil as follows:

DAY & DATE: Wednesday, May 6, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: **Remove** HB 636; Remove HB 1177
Add HB 877, HB 1030, HB 1105, HB 1280, HB 1410

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 40	Summary Ejectment/Appeals.	Representative Moore
~~HB 636~~	~~Staff Dev. OK on Protected Teacher Workdays.~~	~~Representative Haire~~
HB 805	Workers' Comp./Calculation of Income.	Representative Glazier
HB 877	Repeal UI Disqual. For Trailing Spouses.	Representative Wainwright
HB 1030	Exempt Plumb'g Contractor/Well Contractr Reqs.	Representative Howard Representative Allred
HB 1105	Amend Laws/Refrigeration Contractors.	Representative Martin
HB 1169	Enact WARN-NC/Give 90-Day Layoff Notice.	Representative Glazier Representative Lucas Representative Ross Representative Faison
~~HB 1177~~	~~Restore Flexibility to the School~~	~~Representative Bell~~

	~~Calendar.~~	
HB 1280	Clarifying Changes/Work First Program.	Representative Howard Representative Earle
HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Grady Representative Owens, Jr. Representative Gibson, III
HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Johnson Representative Justus Representative Brisson
HB 1511	Merchant's Discount.	Representative Moore

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:50 p.m. on **May 01, 2009**.

Principal Clerk
Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

2nd Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

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Add HB 877, HB 1030, HB 1105, HB 1280, HB 1410

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HB 1105	Amend Laws/Refrigeration Contractors.	Representative Martin
HB 1169	Enact WARN-NC/Give 90-Day Layoff Notice.	Representative Glazier Representative Lucas Representative Ross Representative Faison
~~HB 1177~~	~~Restore Flexibility to the School Calendar.~~	~~Representative Bell~~
HB 1280	Clarifying Changes/Work First Program.	Representative Howard Representative Earle
HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Grady Representative Owens, Jr. Representative Gibson, III
HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Johnson

Representative Justus
Representative Brisson
Representative Moore

HB 1511 Merchant's Discount.

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:50 p.m. on **May 01, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

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HB 1177	Restore Flexibility to the School Calendar.	Representative Bell
HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Grady Representative Owens, Jr. Representative Gibson, III
HB 1511	Merchant's Discount.	Representative Moore

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:45 p.m. on **May 01, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, May 6, 2009
1:00 P.M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 40	Summary Ejectment/Appeals	Rep. Moore
HB 805 NOTE:	Workers' Comp./Calculation of Income This bill was not heard.	Rep. Glazier
HB 877	Repeal UI Disqual. For Trailing Spouses	Rep. Wainwright
HB 1105	Amend Laws/Refrigeration Contractors	Rep. Martin
HB 1410	Building Code Exclusion/Hot Water Heaters	Rep. Justice Rep. Johnson Rep. Justus Rep. Brisson

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, May 6, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair, Representatives Starnes, Stewart, Wilkins, Vice Chairs; Representatives Allen, Allred, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Harrell, McGee, Mills, Pierce, Samuelson, Steen, Tarleton, Warren, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 1105 - A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS. Sponsor: Representative Martin
Representative Warren moved for adoption of the proposed committee substitute, and it was adopted. Representative Martin presented the bill. He explained that currently in the statutes, there is the State Board of Refrigeration Examiners. The bill tweaks several of the things that the board can and cannot do. It clarifies who is and who is not subject to regulation by the State Board. It also clarifies the Board's powers to bring in line what other similar State Boards can do with regard to retaining legal counsel and dealing in real property for their office. Representative England moved for a favorable report to the proposed committee substitute, unfavorable to the original bill, and a re-referral to the Committee on Finance. The motion passed.

HB 1410 - A BILL TO BE ENTITLED AN ACT TO EXEMPT WATER HEATER REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE HEATER IS OF THE SAME SIZE AND CAPACITY AND IS IN THE SAME LOCATION WITH RESPECT TO THE EXISTING WATER PIPING. Sponsor(s): Representatives Justice, Johnson, Justus, Brisson
Representative Brisson presented the bill and said that lines 1-5 describe everything that the bill is changing and feels it is a good bill. Jon Carr, represented the Plumbing/Heating Contractors Association of NC and spoke against the bill. William Eubanks, Chief Inspector, New Hanover County answered questions concerning permits and contracts. Representative Justice said it was a good bill. Representative Floyd

moved for a favorable report to the original bill with a re-referral to the Committee on State Government and Personnel. The motion passed.

HB 40 - A BILL TO BE ENTITLED AN ACT REQUIRING THAT NOTICE OF APPEAL FROM A MAGISTRATE'S JUDGMENT IN A SUMMARY EJECTMENT PROCEEDING BE GIVEN WITHIN FIVE DAYS AFTER ENTRY OF JUDGMENT.
Sponsor: Representative Moore
Representative Blackwell moved to adopt the proposed committee substitute, and it was adopted. Representative Moore presented the bill. He explained that it cuts down on the appeal period or period in which a person evicted from residence or property has to file an appeal from 10 days to 5 days. Bill Rowe, NC Justice Center appeared before the Committee and cautioned them not to pass this bill quickly so as to protect homeowners. Colleen Kochanek, represented the Apartment Association of North Carolina, and spoke in support of the bill. Ms. Stahl, Disability Rights of North Carolina spoke on behalf of her clients and did not support the bill. Discussion followed. Representative Mills moved for a favorable report to the proposed committee substitute, unfavorable to the original bill with a re-referral to the Committee on Judiciary II. The motion passed.

HB 877 – A BILL TO BE ENTITLED AN ACT TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.
Sponsor: Representative Wainwright
Representative Stewart moved for adoption of the proposed committee substitute, and it was adopted. Representative Wainwright explained the proposed committee substitute. He said that it made several changes to the Employment Security law. The changes will allow North Carolina to apply for federal incentive payments. David Clegg, Deputy Chairman & CEO, Employment Security Commission appeared before the Committee and answered their questions. Representative Floyd moved for a favorable report to the proposed committee substitute, unfavorable to the original bill with a re-referral to the Committee on Finance. The motion passed.

Representative Dickson announced that the Committee would reconvene 15 minutes after the House session. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 p.m.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Donald L. Fox	State Board Refrig. Examiners, Chair
Jack Nichols	Allen & Pinnix
Shereenah Wilson	
Greg Bright	Wake County Environmental Services
Dexa Watts	DENR / Div of Water Quality
Jerry Rimmer	DENR/DWQ
Coleen H. Sullins	DENR / DWQ
DENNIS BORDEAUX	NEW HANOVER COUNTY 230 GOVERNMENT CENTER DR Suite 110 Wilmington NC 28403
Willie Hucks	NCDOR
Ed Strickland	NCDOR
David Ambrose	Electric Cities

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 p.m
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dean Simpson	DHHS/DSS
Dara Mims	DHHS/DSS
Sara Nienow	Dept of Commerce
Elizabeth Dalton	NERMA
Katherine Joyce	NCASA
John Monaghan	Piedmont Natural Gas Company
BARRY GUPTON	NC DEPT. OF INSURANCE
Colleen Kocharek	Apartment Association
Bill Rowe	NC Justice Center
Robert Massengill	Massengill Elliott & NH ELECT ASSOC
Terry Crone	NC ASSOCIATION of ELECTRICAL CONTRACTORS

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 pm.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Mary Beth McMillan	NC AFL-CIO
Mike Olsen	NC State AFLCIO
Dale Dawson	NC State Board of Exam. Plbg + Htg + Fs
Robbie Brooks	NC Board of Examiners of Electrical Contractors
Jim Stegall	U.C.P.S.
David Bray	MWC
Denise Lee	SOS-NC
Mike Foreman	NCAE
Thom Mansfield	NCMB
Elizabeth Biser	DENR

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 p.m.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Manning	R Manning Electrical Contractor LLC 4214-B Blue Clay Rd Castle Hayne, NC 28429
Jessi Hayes	NCHBA
Ken Szymanski	Apt. Ass'n. of NC
John McMillan	NFIB
Lockhart Taylor	NCESC
DAVID [illegible]	ESC
Bill Scoggin	KCC
Doug Lassiter	NCSTA
Jon Carr	PHCC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 p.m.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	NC Chamber
Butch Gunnells	NCBeer
Preston Howard	MCIC
Meghan Jones	DRNC
Annaliese Dolph	DRNC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 1:00 p.m.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valen	NCW
[illegible]	NMBS
Nick Fougler	Young Moore & Henderson
allison Weiler	Charlotte Chamber

House Pages

Commerce, Small Business

Name of Committee: _____ **Date:** May 6, 2009 1:00 p.m.

1. Name: Hannah Reynolds

   County: Person

   Sponsor: Hackney

2. Name: TYNIQUEA JOYNER

   County: HERTFORD

   Sponsor: ANNE MOBLEY

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

Sgt-At-Arms

Name: John Brandon

2. Name: Rod Finger

3. Name: _____

4. Name: _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1105 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1105
PROPOSED COMMITTEE SUBSTITUTE H1105-PCS50664-RN-23

Short Title: Amend Laws/Refrigeration Contractors. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions. This Article shall not apply to the installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or the replacement of ~~lamps and fuses~~lamps, fuses, and door gaskets and to the installation and servicing of domestic household ~~refrigerators and freezers or domestic ice making appliances connected by means of attachment plug in devices to suitable~~ self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently ~~installed.~~installed and do not require the opening of service valves. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any comfort cooling devices or systems."

SECTION 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration

contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the ~~months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination.~~Board's office by appointment."

SECTION 3. G.S. 87-59 reads as rewritten:

"**§ 87-59. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of any refrigeration contractor who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this Article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a refrigeration contractor as defined in this Article. Any person may prefer charges of fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, against any refrigeration contractor who is licensed under the provisions of this Article. All charges shall be in writing and verified by the complainant, and shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish ~~guidelines,~~rules and regulations, consistent with the provisions of this ~~Article,~~Article and Chapter 150B of the General Statutes, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings of the Board, and the disposition of the matter.

(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the Board a penalty not to exceed one thousand dollars ($1,000). The funds derived from the penalty shall be ~~deposited into the General Fund.~~remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) All records, papers, and other documents containing information collected and compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes."

SECTION 4. G.S. 87-61 reads as rewritten:

"**§ 87-61. Violations made misdemeanor; employees of licensees excepted.**

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class ~~2~~ 3 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees,

while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this Article, shall not be construed to have engaged in the business of refrigeration contracting."

SECTION 5. G.S. 87-61.1 reads as rewritten:

"**§ 87-61.1. Board may seek injunctive ~~relief.~~relief; retain counsel.**

(a) Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

(b) The Board may employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3."

SECTION 6. Article 5 of Chapter 87 of the General Statutes is amended by adding the following new section to read:

"**§ 87-63.1. Ownership of real property; equipment; liability insurance.**

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

SECTION 7. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes the examination, the examination fee shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. Effective January 1, 2012, the Board may require, as a prerequisite to the annual renewal of a license, that licensees complete continuing education courses in subjects related to refrigeration contracting to ensure the safe and proper installation of commercial and transport refrigeration work and equipment. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows the license to lapse may be reinstated by the Board upon payment of a fee not to exceed seventy-five dollars ($75.00). Any person who fails to renew a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

SECTION 8. Sections 1, 2, 5, and 6 are effective when this act becomes law. Section 3 becomes effective October 1, 2009. Section 4 becomes effective December 1, 2009, and applies to offenses occurring on or after that date. Section 7 of this act becomes effective January 1, 2012. The remainder of this act is effective when it becomes law.

HOUSE BILL 1105:
Amend Laws/Refrigeration Contractors

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	May 6, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	PCS to First Edition H1105-CSRN-23		

SUMMARY: ***House Bill 1105 would amend the laws regulating refrigeration contractors.*** ***The Proposed Committee Substitute corrects one typographical error and modifies the effective date.***

CURRENT LAW: Article 5 of Chapter 87 of the General Statutes deals with refrigeration contractors. It creates the State Board of Refrigeration Examiners. It provides for removal, qualifications, and compensation of the Board. It also requires that persons and corporations must apply to the Board and get a license before engaging in refrigeration business or contracting. Article 5 provides for revocation or suspension of licenses for cause. Violations of Article 5 are currently a Class 2 misdemeanor, and the Board may also seek injunctive relief when appropriate.

BILL ANALYSIS: House Bill 1105 does all of the following.

Section 1 provides that "refrigeration trade business" does not apply to either of the following:

- The installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer molded plug that does not require the opening of service valves or the replacement of lamps, fuses, and door gaskets.
- The installation and servicing of domestic household self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently installed and do not require the opening of service valves.

Section 2 provides that regular examinations for licensing in refrigeration are to be given in the office of the State Board of Refrigeration Examiners Board (Board) by appointment (was, given in the months of April and October annually and additionally as the Board deems necessary).

Section 3 authorizes the Board to adopt and publish rules and regulations (was, guidelines) consistent with the provisions of GS Chapter 87, Article 5 and GS Chapter 150B (was, Article 5). Also provides that when the Board accepts an offer to compromise the charge where the accused pays a penalty (not to exceed $1,000) to the Board, the penalty funds are to be remitted to the Civil Penalty and Forfeiture Fund (was, the General Fund).

Section 4 changes the penalty for violations of Article 5 from a Class 2 misdemeanor to a Class 3 misdemeanor.

Section 5 authorizes the Board to employ or retain legal counsel for matters and purposes the Board deems fit and proper. The Board is still subject to the statute requiring agencies of the State to obtain written permission from the Attorney General prior to employing private counsel.

Section 6 authorizes the Board to own or otherwise deal with real property in the same manner as a private person or a corporation, subject only to the approval of the Governor and the Counsel of State. It provides that collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board. It provides that the Board may rent or purchase equipment and supplies, and purchase insurance to cover its activities, operations, or employees.

Section 7 allows the Board to require, as part of the any renewal of a license, that licensees complete continuing education in subjects related to refrigeration contracting. (effective Jan. 1, 2012).

EFFECTIVE DATE: Sections 1, 2, 5, and 6 are effective when the act becomes law. Section 3 becomes effective October 1, 2009. Section 4 becomes effective December 1, 2009, and applies to offenses occurring on or after that date. Section 7 of this act becomes effective January 1, 2012. The remainder of this act is effective when it becomes law.

H1105-SMRN-55(CSRN-23) v1

HOUSE BILL 1105

Short Title:	Amend Laws/Refrigeration Contractors.	(Public)
Sponsors:	Representative Martin.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions. This Article shall not apply to the installation of-self contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or the replacement of ~~lamps and fuses~~lamps, fuses, and door gaskets and to the installation and servicing of domestic household ~~refrigerators and freezers or domestic ice making appliances connected by means of attachment plug in devices to suitable~~ self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently ~~installed.~~installed and do not require the opening of service valves. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any comfort cooling devices or systems."

SECTION 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the ~~months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination.~~Board's office by appointment."

SECTION 3. G.S. 87-59 reads as rewritten:

"**§ 87-59. Revocation or suspension of license for cause.**

(a) The Board shall have power to revoke or suspend the license of any refrigeration contractor who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this Article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a refrigeration contractor as defined in this Article. Any person may prefer charges of fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, against any refrigeration contractor who is licensed under the provisions of this Article. All charges shall be in writing and verified by the complainant, and shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The Board shall adopt and publish ~~guidelines,~~rules and regulations, consistent with the provisions of this ~~Article,~~Article and Chapter 150B of the General Statutes, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings of the Board, and the disposition of the matter.

(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the Board a penalty not to exceed one thousand dollars ($1,000). The funds derived from the penalty shall be ~~deposited into the General Fund.~~remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) All records, papers, and other documents containing information collected and compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes."

SECTION 4. G.S. 87-61 reads as rewritten:

"**§ 87-61. Violations made misdemeanor; employees of licensees excepted.**

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class ~~2~~ 3 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this Article, shall not be construed to have engaged in the business of refrigeration contracting."

SECTION 5. G.S. 87-61.1 reads as rewritten:

"**§ 87-61.1. Board may seek injunctive ~~relief.~~relief; retain counsel.**

(a) Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

(b) The Board may employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3."

SECTION 6. Article 5 of Chapter 87 of the General Statutes is amended by adding the following new section to read:

"**§ 87-63.1. Ownership of real property; equipment; liability insurance.**

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

SECTION 7. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes the examination, the examination fee shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. Effective January 1, 2012, the Board may require, as a prerequisite to the annual renewal of a license, that licensees complete continuing education courses in subjects related to refrigeration contracting to ensure the safe and proper installation of commercial and transport refrigeration work and equipment. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows the license to lapse may be reinstated by the Board upon payment of a fee not to exceed seventy-five dollars ($75.00). Any person who fails to renew a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

SECTION 8. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1410 A BILL TO BE ENTITLED AN ACT TO EXEMPT WATER HEATER REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE HEATER IS OF THE SAME SIZE AND CAPACITY AND IS IN THE SAME LOCATION WITH RESPECT TO THE EXISTING WATER PIPING.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on STATE GOVERNMENT/STATE PERSONNEL.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1410:
Building Code Exclusion/Hot Water Heaters

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel	**Date:**	May 6, 2009
Introduced by:	Reps. Justice, Johnson, Justus, Brisson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1410 amends the laws governing county and municipal building inspection permits to exempt water heater replacements in residences from the permitting requirement if the heater is of the same size and capacity and is in the same location.

BILL ANALYSIS:

Section 1 of the bill amends the county inspection permitting law to create and exception for the connection of existing water piping to a water heater in a one- or two-family dwelling, that is being replaced, if the replacement is in the same location and of the same size and capacity as the original, provided that the original installation met the State Building Code requirements in effect at the time of installation. T

This section also creates and exception for the connection of an existing branch circuit to a replaced water heater, if the replacement is in the same location and is of the same size, capacity and electrical rating as the original and if the original met the State Building Code requirements in effect at the time of installation.

Section 2 of the bill makes an identical amendment to the municipal inspection permitting law.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1410-SMRO-74(e1) v1

HOUSE BILL 1410

Short Title:	Building Code Exclusion/Hot Water Heaters.	(Public)
Sponsors:	Representatives Justice, Johnson, Justus, Brisson (Primary Sponsors); Cleveland, Langdon, Lucas, McComas, McElraft, and Starnes.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT WATER HEATER REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE HEATER IS OF THE SAME SIZE AND CAPACITY AND IS IN THE SAME LOCATION WITH RESPECT TO THE EXISTING WATER PIPING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-357 reads as rewritten:

"**§ 153A-357. Permits.**

(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any ~~building;~~building.

(2) The installation, extension, or general repair of any plumbing ~~system;~~system except that in any one- or two-family dwelling unit, a permit shall not be required for the connection of existing water piping to a water heater that is being replaced, provided that the replacement is in the same location and is of the same size and capacity as the original and provided that the original installation met the version of the State Building Code in effect at the time of installation.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system; or~~system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit, a permit shall not be required for the connection of an existing branch circuit to a water heater that is being replaced, provided that the replacement is placed in the same location and is of the same size, capacity, and electrical rating as the original and provided that the original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable

State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

...."

SECTION 2. G.S. 160A-417 reads as rewritten:

"**§ 160A-417. Permits.**

(a) No person shall commence or proceed ~~with:~~with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or ~~structure,~~structure.

(2) The installation, extension, or general repair of any plumbing ~~system,~~ system, except that in any one- or two-family dwelling unit, a permit shall not be required for the connection of existing water piping to a water heater that is being replaced, provided that the replacement is in the same location and is of the same size and capacity as the original and provided that the original installation met the version of the State Building Code in effect at the time of installation.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system, or~~system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except that in any one- or two-family dwelling unit, a permit shall not be required for the connection of an existing branch circuit to a water heater that is being replaced, provided that the replacement is placed in the same location and is of the same size, capacity, and electrical rating as the original and provided that the original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans

submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor.

...."

SECTION 3. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 40 A BILL TO BE ENTITLED AN ACT REQUIRING THAT NOTICE OF APPEAL FROM A MAGISTRATE'S JUDGMENT IN A SUMMARY EJECTMENT PROCEEDING BE GIVEN WITHIN FIVE DAYS AFTER ENTRY OF JUDGMENT.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 40
PROPOSED COMMITTEE SUBSTITUTE H40-PCS70417-RN-21

Short Title: Summary Ejectment/Appeals. (Public)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NOTICE OF APPEAL FROM A MAGISTRATE'S JUDGMENT IN A SUMMARY EJECTMENT PROCEEDING BE GIVEN WITHIN FIVE DAYS AFTER ENTRY OF JUDGMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-228 reads as rewritten:

"**§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.**

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after entry of ~~judgment.~~judgment, except that in a summary ejectment proceeding under Article 3 of Chapter 42 of the General Statutes, written notice of appeal must be filed in the office of the clerk of superior court within five days after entry of judgment. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within five days after entry of judgment in a summary ejectment proceeding and within 10 days after entry of ~~judgment,~~judgment in all other proceedings, pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after entry of judgment in a summary ejectment proceeding and within 20 days after entry of judgment in all other proceedings shall result in the automatic dismissal of the appeal. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within five days of entry of judgment by the magistrate in a summary ejectment proceeding and within 10 days of entry of judgment by the ~~magistrate,~~magistrate in all other proceedings, file an affidavit that he or she is unable by reason of poverty to pay the costs of appeal. Within 10 days after entry of judgment in a summary ejectment proceeding and within 20 days after entry of ~~judgment,~~judgment in all other proceedings, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed."

SECTION 2. This act becomes effective October 1, 2009, and applies to appeals filed on or after that date.

HOUSE BILL 40:
Summary Ejectment/Appeals

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	May 6, 2009
Introduced by:	Rep. Moore	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H40-CSRN-21		Committee Co-Counsel

SUMMARY: House Bill 40 would provide that notice of appeal from a magistrate's judgment in a summary ejectment proceeding must be given within 5 days after entry of judgment. The Proposed Committee Substitute corrects the effective date.

CURRENT LAW: Article 3 of Chapter 42 deals with summary ejectment. Summary ejectment is the process through which a landlord may evict or remove a tenant from possession of the leased premises. Summary ejectment proceedings are heard before magistrates in small claims court, but may be appealed to district court.

Notice of appeal may be given in open court or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of superior court within 10 days after entry of judgment.

The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after entry of judgment.

Failure to pay the costs of court to appeal within 20 days after entry of judgment shall result in the automatic dismissal of the appeal.

A person desiring to appeal as an indigent shall, within 10 days of entry of judgment by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs of appeal.

Within 20 days after entry of judgment, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal.

BILL ANALYSIS:

House Bill 40 does all of the following:

- **Written notice of appeal**-In summary ejectment actions where notice of appeal is not given in open court, written notice of appeal must be filed in the office of the clerk of superior court within 5 days after entry of judgment. (Would remain 10 days for other proceedings)
- **Perfecting the appeal**-Provides that if not orally announced in open court, the appeal shall be perfected by filing the notice of appeal in the office of superior court within 5 days after entry of judgment in a summary ejectment proceeding. (Would remain 10 days for all other proceedings)
- **Dismissal of Appeal for failing to pay costs of the appeal**- For summary ejectment cases, failure to pay the costs of the appeal within 10 days would lead to automatic dismissal. (Would remain 20 days for all other proceedings)
- **Affidavit for appealing as indigent**-Provides that a person wishing to appeal as an indigent shall file an affidavit indicating that he or she is unable to pay the costs of appeal within 5

days of entry of judgment in a summary ejectment proceeding. (Would remain 10 days for all other proceedings).

House Bill 40 also changes the time period that a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. For summary ejectment proceedings, the time period is 10 days after entry of judgment. For all other proceedings, the time period would remain 20 days after entry of judgment.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to appeals filed on or after that date.

H40-SMRN-52(CSRN-21) v1

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HOUSE BILL 40

Short Title:	Summary Ejectment/Appeals.	(Public)
Sponsors:	Representatives Moore; Blackwood, Howard, and Neumann.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NOTICE OF APPEAL FROM A MAGISTRATE'S JUDGMENT IN A SUMMARY EJECTMENT PROCEEDING BE GIVEN WITHIN FIVE DAYS AFTER ENTRY OF JUDGMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-228 reads as rewritten:

"**§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.**

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after entry of ~~judgment.~~judgment, except that in a summary ejectment proceeding under Article 3 of Chapter 42 of the General Statutes written notice of appeal must be filed in the office of the clerk of superior court within five days after entry of judgment. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within five days after entry of judgment in a summary ejectment proceeding and within 10 days after entry of ~~judgment,~~judgment in all other proceedings, pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after entry of judgment in a summary ejectment proceeding and within 20 days after entry of judgment in all other proceedings shall result in the automatic dismissal of the appeal. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within five days of entry of judgment by the magistrate in a summary ejectment proceeding and within 10 days of entry of judgment by the ~~magistrate,~~magistrate in all other proceedings, file an affidavit that he or she is

unable by reason of poverty to pay the costs of appeal. Within 10 days after entry of judgment in a summary ejectment proceeding and within 20 days after entry of ~~judgment,~~judgment in all other proceedings, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 877 A BILL TO BE ENTITLED AN ACT TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 877
PROPOSED COMMITTEE SUBSTITUTE H877-PCS30360-LR-13

Short Title: Repeal UI Disqual. for Trailing Spouses. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INDIVIDUAL WILL NOT BE DENIED UNEMPLOYMENT COMPENSATION SOLELY BECAUSE THE INDIVIDUAL IS SEEKING ONLY PART-TIME WORK, TO REMOVE DISQUALIFYING CONDITIONS RELATED TO SEPARATING FROM WORK FOR COMPELLING FAMILY REASONS INCLUDING DOMESTIC VIOLENCE, ILLNESS, OR DISABILITY, AND TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(29) Seeking only part-time work. – Where an individual is available to work for a number of hours per week that are comparable to the individual's part-time work experience in his or her base period."

SECTION 2. G.S. 96-13(a)(6) reads as rewritten:

"(6) ~~An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:~~

~~a. The claimant's monetary eligibility is based predominately on wages from part-time work.~~

~~b. The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.~~

~~c. The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.~~

~~This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers.~~

Notwithstanding any other provisions of this Chapter, an unemployed individual shall not be ineligible for unemployment compensation benefits under any provision of the Employment Security Law relating to availability

for work, active search for work, or refusal to accept work solely because the individual is seeking only part-time work as defined in G.S. 96-8(29), provided that a majority of weeks of work in the individual's base period include part-time work."

SECTION 3. G.S. 96-14 reads as rewritten:

"**§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

(1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the ~~leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty five percent (85%) of the individual's regular wage, whichever is greater;~~ leaving; and

b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

(1a) Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer.

(1b) Where an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than twenty percent (20%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which he was employed, said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance

on the part of the individual, such reduction in work hours shall not constitute good cause attributable to the employer for leaving work.

(1c) Where an individual leaves work due solely to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work.

(1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall ~~serve a time certain disqualification for benefits for a period of two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.~~ constitute good cause for leaving work. Notwithstanding the other provisions of this subdivision, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work. Benefits paid on the basis of this subdivision shall not be charged to the account of the employer.

(1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.

(1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes or there is evidence of domestic violence, sexual offense, or stalking, or the claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged. Evidence of domestic violence, sexual offense, or stalking may include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault; ~~and~~ or (iii) documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking. This provision is only applicable to the

claimant and claimant's spouse, parents, and children under 18 years of age, whether the relationship is a biological, step-, half-, or in-law relationship.

(1g) For purposes of this Chapter, separation or discharge solely due to an inability to accept work during a particular shift as a result of an undue family hardship shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer.

(2) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work. Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer.

(2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the Commission shall not be disturbed by a reviewing court except upon a finding of plain error.

(2b) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of his employment and that the individual is responsible to

supply has been revoked, suspended, or otherwise lost to him, or his application therefor has been denied for a cause that was within his power to control, guard against, or prevent.

(3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor ~~organization.~~organization;

d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).

(4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that:

a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission;

b. Such individual has discontinued his training course without good cause; or

c. If the individual is separated from his training course or vocational school due to misconduct.

(5) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials

or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(6) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.

(6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:

a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;

b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or

c. The employing entity was a proprietorship, and the individual was a proprietor.

(7) For any week after June 30, 1939, with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.

(8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the Commission may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the Commission by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the Commission, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the Commission or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose

of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

(9) The amount of compensation payable to an individual for any week which begins after July 2, 1977, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount rounded to the nearest dollar equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week.

The amount of benefits payable to an individual for any week which begins after July 1, 1981, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by the amounts of any such pension, retirement or retired pay, annuity, or other payment contributed to in part or in total by the individual's base period employers; provided, however, that the amount of all payments received by an individual under the Railroad Retirement Act shall be deducted from the individual's benefit amount. Provided further, that all such reduced weekly benefit amounts shall be rounded to the nearest lower full dollar amount (if not a full dollar amount).

(10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:

a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;

b. Subsequently becomes unemployed through no fault of his own; and

c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

(11) a. Notwithstanding any other provisions of this Chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable Federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work.

b. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

SECTION 4. This act becomes effective January 1, 2010.

HOUSE BILL 877:
Repeal UI Disqual. for Trailing Spouses

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	May 6, 2009
Introduced by:	Rep. Wainwright	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H877-CSLR-13		

SUMMARY: ***The PCS for House Bill 877 makes several changes to the Employment Security law related to eligibility for part-time workers, removing disqualifying conditions for separating from work for compelling family reasons, and eliminating the two-week disqualification for leaving work to accompany a spouse to a new place for work in a different location. These changes will allow North Carolina to apply for federal incentive payments.***

BILL ANALYSIS:

Under the federal 'Assistance for Unemployed Workers and Struggling Families Act', states can apply to receive incentive payments from a 7 billion dollar national fund. In order to be eligible for the maximum payment (which is calculated based on the state's proportionate share of FUTA taxable wages) the state's law must contain specific provisions. In order to obtain the first one-third of the payment, the law must contain provisions for a base period using recent wages or an alternative base period. In order to qualify for the remaining two-thirds, the state law must contain specific provisions related to benefit eligibility.

House Bill 877 amends North Carolina law in order to qualify for the incentive payments. The bill makes the following changes:

- Provides that an unemployed individual is not ineligible for unemployment compensation benefits solely because the individual is seeking only part-time work, provided the majority of weeks of work in the individual's base period include part-time work.
- Provides that an individual who is discharged or leaves work due to the illness or disability of the employee, a minor child, or an aged or disabled parent is not disqualified from receiving benefits, regardless of whether the employee could have done alternative work offered by the employer.
- Eliminates the two-week disqualification period for a claimant who leaves work to accompany a spouse to a new place of residence where the spouse has secured work and the location is too far for the claimant to commute. This amendment provides that benefits paid on the basis of this provision are not charged to the account of the employer.
- Clarifies that the provision in current law that allows a claimant who leaves work as a result of domestic violence is deemed to be deemed have good cause for leaving, applies to the claimant, the claimant's spouse, parents and minor children.
- Provides that an individual cannot be denied benefits for refusing to accept full-time work if the individual meets the part-time worker requirements.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

H877-SMRO-73(CSLR-13) v1

HOUSE BILL 877

Short Title:	Repeal UI Disqual. for Trailing Spouses.	(Public)
Sponsors:	Representatives Wainwright; Faison, Lucas, and Pierce.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-14(1d) reads as rewritten:

"(1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall ~~serve a time certain disqualification for benefits for a period of two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.~~constitute good cause for leaving work. Notwithstanding the other provisions of this subdivision, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work. Benefits paid on the basis of this subdivision shall not be charged to the account of the employer."

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

HOUSE BILL 805

Short Title:	Workers' Comp./Calculation of Income.	(Public)
Sponsors:	Representatives Glazier; Faison and Lucas.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN EMPLOYER'S CONTRIBUTIONS TO AN EMPLOYEE'S RETIREMENT ACCOUNTS ARE INCLUDED IN THE CALCULATION OF "AVERAGE WEEKLY WAGE" UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(5) reads as rewritten:

"(5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to his employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. For the purposes of this subdivision, the term 'earnings' includes an employer's contributions to an employee's retirement accounts if the contributions are vested, quantifiable, and available to the employee.

Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies leaving dependents surviving, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability or for the death of a minor without dependents shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks, and then the compensation may be increased in proportion to his expected earnings.

In case of disabling injury or death to a volunteer fireman; member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under Article 11 of Chapter 143B of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman, member of an organized rescue squad, authorized pickup firefighter of the Division of Forest Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer fireman, member of an organized rescue squad, an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29."

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

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, May 6, 2009
6:00 P.M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 1030	Exempt Plumb'g Contractor/Well Contractr Reqs.	Rep. Howard Rep. Allred
HB 1280	Clarifying Changes/Work First Program	Rep. Howard Rep. Earle
HB 1409	Building Code Exclusion/Certain Wiring	Rep. Justice Rep. Grady Rep. Owens, Jr. Rep. Gibson, III
HB 1511	Merchant's Discount	Rep. Moore

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, May 6, 2009
6:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, in Room 1228, Legislative Building at 6:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Starnes, Stewart, Vice Chairs; Representatives Allred, Blackwell, Blackwood, Boles, Braxton, Cole, Floyd, McGee, Mills, Samuelson, Tarleton, and Warren. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 1030 - A BILL TO BE ENTITLED AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.
Sponsor(s): Representative Howard and Representative Allred
Representative Howard presented the bill and said that it was a consensus bill involving (well contractors, DNER, Executive Director, State Board of Examiners for Plumbing). With the bill, the State Board of Plumbing, Heating and Fire Sprinkler Contractors will incorporate into their computer education the information that these people need to have for their certification. It exempts them from having to do two different pieces of continuing education. Representative Starnes moved for a favorable report of HB 1030 with a re-referral to the Committee on Judiciary III. The motion passed.

HB 1280 - A BILL TO BE ENTITLED AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO THE FEDERAL WORK FIRST PROGRAM.
Sponsor: Representative Howard and Representative Earle
Representative Howard explained the bill and said that years ago, they wrote the Work First Program which was a part of welfare reform. The majority of the bill makes clarifying and technical changes. The changes are needed in order to be in compliance so as not to have a federal penalty imposed for failure to satisfy the minimum participation rates which could amount to a loss of federal dollars up to 21%. Discussion followed. Representative Tarleton moved for a favorable report for HB 1280 with a re-referral to the Committee on Appropriations. The motion passed.

HB 1409 - A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN SIMPLE WIRING ACTIVITIES AND APPLIANCE REPLACEMENT IN RESIDENCES FROM

BUILDING PERMITTING REQUIREMENTS WHEN THE APPLIANCE IS OF THE SAME ELECTRICAL RATING AND REQUIRES NO CHANGE TO EXISTING ELECTRICAL CIRCUITS AND THE WORK IS PERFORMED BY A LICENSED ELECTRICIAN. Sponsor(s): Representatives Justice, Grady, Owens, Jr., Gibson, III
Representative Samuelson moved to adopt the proposed committee substitute, and it was adopted. Representative Justice explained how the bill initially came to her attention. She said that in New Hanover County when electrical inspectors are riding around and if they see an electrical contractor's truck in the driveway, they stop and ask what they are doing. It has become an odd situation. (See bill summary). Terry Cromer, Executive Director for NC Association of Electrical Contractors appeared before the Committee. He is also retired Chief Inspector for the City of High Point. The bill came to his board meeting in January. The board asked that he contact Representative Justice to get clarity on it and he did. After that, the board supported the bill. Nick Fountain, Attorney, Young Moore & Henderson, represented the State Electrical Board and Plumbing and Heating Board. He said the Board is opposed to the bill as well as the other electrical associations active in the state. He was willing to work with Representative Justice to resolve the problems, but did not feel this was the best solution to the problems at hand. Discussion followed. Representative Samuelson moved for a favorable report to the proposed committee substitute, unfavorable to the original bill and a re-referral to the Committee on State Government/State Personnel. The motion passed.

HB 1511 - A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A SALES TAX DISCOUNT FOR MERCHANTS. Sponsor: Representative Moore
Representative Tarleton moved to adopt the proposed committee substitute, and it was adopted. Representative Moore explained the bill. He said that it puts back in place the merchant's discount which is a 1% rebate that merchants get for collecting the state's sales and use tax. He said there is cost to the state. The fiscal note indicated $71 million. He noted this might not be good timing with the economic situation; however, he asked for the Committee's support of the bill. Representative Braxton asked for a cap to help the small merchant. Representative Tarleton also asked for a cap. The bill sponsor agreed to put that language in. Discussion followed. Representative Braxton moved for a favorable report to the proposed committee substitute, unfavorable to the original bill with a re-referral to the Committee on Finance. The motion passed.

The meeting adjourned at 6:35 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 6, 2009 6:00 PM

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Schilder	MWC
Elizabeth Dalton	NCEMA
Colleen Kochanek	NCGWA
John Poland	NCWOA
Jeff Stewart	NC Chamber
Michelle Frazier	MF+S
TERRY CROMER	NCAEC
Robbie Brooks	NCBEEC
JULIAN BURNS	Quality Power Solutions
Dale Dawson	State Board of Examiners Plbg, HTG+FS
Jesse Hayes	NCHBA

VISITOR REGISTRATION SHEET

House Commerce, Small Business & Entrepreneurship 5/6/09 6:00 PM

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nick Focagtain	Spaeng Moore & Henderson
Bob Manning	R Manning/Gladd Carbon 4214-B Blue Clay Rd Castle Hayne, NC 28429
Robert Massengill	Massengill Elect / NH County Elect Contractor Assoc
Jack Rogers	DSS - 4912 Boulder Creek Lane Raleigh NC
Deon Simpson	DSS / DHHS

House Pages

Commerce/Small
Name of Committee Business Date: May 6, 2009 6:00 p.m.

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

Name: John Brandon

2. Name: Rod Frieger

3. Name: Bob Rossi

4. Name: Yoey Bae

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1030 A BILL TO BE ENTITLED AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1030: Exempt Plumb'g Contractor/Well Contractr Reqs

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III, if favorable, Finance	**Date:**	May 6, 2009
Introduced by:	Reps. Howard, Allred	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1030 would exempt plumbing contractors from well certification requirements.***

BILL ANALYSIS:

The bill would exempt a licensed plumbing contractor who installs pumps or pumping equipment, installs, breaks, or reinstalls a well seal, or disinfects a well incident to the installation, alteration or replacement of pumps or pumping equipment within or near a well, from the well contractor certification requirement. However, the plumbing contractor must attend a continuing education course that covers well seal installation, protection, and sanitation.

The State Board of Plumbing, Heating and Fire Sprinkler Contractors must ensure that continuing education courses covering these subjects are available to licensed plumbers during each six-month continuing education course schedule.

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

H1030-SMRO-75(e1) v1

HOUSE BILL 1030

Short Title:	Exempt Plumb'g Contractor/Well Contractr Reqs.	(Public)
Sponsors:	Representatives Howard, Allred (Primary Sponsors); Dockham and Starnes.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III, if favorable, Finance.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"(b) Exempt Persons and Activities. – This Article does not apply to any of the following persons or activities:

...

(13) A person who is licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who installs pumps or pumping equipment; installs, breaks, or reinstalls a well seal in accordance with G.S. 87-85(6); or disinfects a well incident to the installation, alteration, or replacement of pumps or pumping equipment within or near a well. However, the plumbing contractor shall maintain documentation of having attended a continuing education course that covered well seal installation, protection, and sanitation. The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors shall ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1280 A BILL TO BE ENTITLED AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO THE FEDERAL WORK FIRST PROGRAM.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1280:
Clarifying Changes/Work First Program

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	**Date:**	May 6, 2009
Introduced by:	Reps. Howard, Earle	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1280 amends various provisions pertaining to the Work First Program.

BILL ANALYSIS:

Definitions - Section 1 of the bill makes various clarifying changes to the definitions applicable to the Work First Program. "Dependent child" is amended to mean a person 17 years of age or younger. A child who is 18, if in high school and expected to graduate by his or her 19th birthday, may also receive Work First benefits through the month he or she turns 19 or graduates from high school, whichever comes first. The definition of "family is amended to include a blood or half-blood relative or adoptive relative limited to brother, sister, great-grandparent, great-great-grandparent, uncle, aunt, great-uncle, great-aunt, great-great, uncle, great-great-aunt, nephew, niece, first cousin, step-brother, and step-sister. "Parent" is amended to include a step-parent. The section clarifies that Work First Diversion Assistance must be used to address a specific family crisis and not for ongoing or recurrent needs and is limited to once in a 12 month period. This section deletes the definition of First Stop Employment Assistance.

Section 2 of the bill deletes references to the First Stop Employment Assistance and states that the Department of Health and Human Services (DHHS) and electing counties (counties that are approved to develop and administer a local Work First program) must provide Work First Program assistance to qualified immigrants on the same basis as citizens to the extent permitted by federal law.

Duties of DHHS - Section 3 of the bill clarifies the duties of DHHS with respect to the Work First Program. It must ensure that all families with work eligible parents and parents with children under the age of 12 months receive Work Fist benefits in the month after compliance with their Mutual Responsibility Agreement (MRA). The MRA is a agreement between a county and a recipient of a Work First Assistance that describes the eligibility conditions. This section clarifies that DHHS must establish the schedules for the submission of County Plans and monitor the performance of both Electing Counties and Standard Counties.

Duties of County Boards of Commissioners in Electing Counties - Section 4 of the bill deletes the following duties:

- To determine and list persons and families eligible for the Work First Program.
- To monitor and evaluate the impact of the Work First Program on the economic security and health of children and families, child abuse, and neglect, caseloads for child protective services and foster care, school attendance and academic and behavioral performance.
- To provide monthly progress reports to DHHS.

Electing Counties—County Plan – Section 5 deletes the authority to allow cases to be considered a family case where the benefits are paid only for the child. County Plans also do not have to include (i) the number of MRAs entered into by the county and (ii) A list of the community service programs equivalent to full-time employment that are being offered.

Electing Counties – Duties of DHHS – Section 6 deletes the duty to coordinate activities of other State agencies to provide technical support Electing Counties in developing their County Plans.

Standard Program Counties – Duties of Local Entities – Section 7 provides that the Standard Work First Program must be administered by county departments of social services (DSS). This section rewrites how outcome and performance measures are established by stating that there are 2 goals for the Work First Program: to meet or exceed the federal Work Participation Rate of 50% for all Work Eligible families and 90% of for all two-parent families.

The duties that are deleted are:

- Developing county plans.
- Monitoring and evaluating the impact of the Work First Program on the economic security and health of children and families, child abuse, and neglect, caseloads for child protective services and foster care, school attendance and academic and behavioral performance.
- Providing monthly progress reports to DHHS.

County boards of commissioners are no longer required to appoint a committee to identify the needs of the population to be served and review the county plan. They would also no longer review and approve the County Plan.

Standard Program County Plan – Section 8 deletes the requirement that Standard Program Counties must submit to DHHS a County Plan for approval.

Standard Program Counties – Duties of DHHS – Section 9 deletes the duties of DHHS to: (i) establish the requirements for County Plans and approve County Plans from Standard Program Counties; (ii) coordinate activities of other State and county agencies in meeting Work First Program goals; and (iii) work with State and county agencies and the private sector to develop programs to meet Work First Program goals.

State Plan – Section 10 revises the State Plan to ensure that all families with work eligible parents and parents with children under the age of 12 months receive Work First benefits in the month after compliance with their MRA. Section 10 deletes the requirement that the State Plan include (i) allocations of federal and State funds for Electing Counties; (ii) maintenance of effort and levels of State and county funding; and (iii) description of the federal, State, and local financial participation in the Work First Program. The State Plan also would not have to include: (i) terms and conditions for repayment of Work First Diversion Assistance by those that later get Work First Family Assistance; (ii) allocations of federal, State and county funds for the Standard Work First Program; (iii) levels of State and county funding for the Standard Work First Program; and (iv) allocations for funding for administration at the State and local level.

Section 11 clarifies that the there are 2 goals for the Work First Program: to meet or exceed the federal Work Participation Rate of 50% for all Work Eligible families and 90% of for all two-parent families.

First Stop Employment Assistance- Section 12 discontinues the First Stop Employment Assistance Program and provides that individuals who seek Work First Program assistance and are not exempt from work requirements must now register with the Employment Security Commission for employment services. Each county DSS must enter into a cooperative agreement with the local Employment Security Commission to operate the job search component of Work First. This section deletes the provision that made the Employment Security Commission the primary job placement entity of Work First. The section deletes the requirement that each county Employment Security Commission must organize a Job

Service Employer Committee. The purpose of the Committee was to oversee the operation of the First Stop Employment Program in that county.

Section 13 makes a technical change in the substance abuse treatment requirement for Work First Program recipients.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: The following is from the DHHS website on Work First:

http://www.dhhs.state.nc.us/dss/workfirst/index.htm

"Work First - About Work First

North Carolina's Temporary Assistance for Needy Families (TANF) program, called Work First, is based on the premise that parents have a responsibility to support themselves and their children. Through Work First, parents can get short-term training and other services to help them become employed and self-sufficient, but the responsibility is theirs, and most families have two years to move off Work First Family Assistance. Work First emphasizes three strategies:

1. Diversion: Keeping families off welfare by helping them cope with unexpected emergencies or setbacks.

Under Work First, qualifying families can get a one-time payment equivalent to up to three months worth of cash Work First benefits, based on a needs assessment by the county worker, Medicaid, child care and Food and Nutrition Services, if eligible, and other supportive services.

2. Work: Shortening the length of time that families are on Work First Family Assistance by making work mandatory and by limiting how long a family can receive cash assistance.

To receive Work First Family Assistance benefits, parents must register with the First Stop Employment Assistance Program, sign a Mutual Responsibility Agreement (MRA) and, once they move into the work components of the program, they can continue to receive benefits for up to 24 months. In most cases, families who have reached the 24-month limit cannot receive Work First Family Assistance for three years.

3. Retention: Helping families to stay off public assistance by encouraging them to save and by helping to make sure they really are better off working than on welfare."

H1280-SMRQ-66(e1) v2

HOUSE BILL 1280

Short Title:	Clarifying Changes/Work First Program.	(Public)
Sponsors:	Representatives Howard, Earle (Primary Sponsors); Insko, Lucas, and Parmon.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO THE FEDERAL WORK FIRST PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-24 reads as rewritten:

"**§ 108A-24. Definitions.**

As used in Chapter 108A:

(1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.

(1a) Repealed by Session Laws 2001-424, s. 21.52.

(1b) "Community service" means work exchanged for temporary public assistance.

(1c) "County block grant" means federal and State money appropriated to implement and maintain a county's Work First Program.

(1d) "County department of social services" means a county department of social services, consolidated human services agency, or other local agency designated to administer services pursuant to this Article.

(1e) "County Plan" is the biennial Work First Program plan prepared by each ~~county~~ Electing County pursuant to this Article and submitted to the Department for incorporation into the State ~~Plan.~~Plan that also includes the Standard Work First Program.

(2) "Department" is the Department of Health and Human Services, unless the context clearly indicates otherwise.

(3) "Dependent child" is a person ~~under 18 years of age~~ 17 years of age or younger or, in the medical assistance program, a person under 19 years of age. A child 18 years of age, if in high school and expected to graduate by his or her 19th birthday, may receive Work First benefits through the month he or she turns 19 years of age or graduates from high school, whichever comes first.

(3a) "Electing County" means a county that elects to develop and is approved to administer a local Work First Program.

(3b) "Employment" means work that requires either a contribution to FICA or the filing of a State N.C. Form D-400, or the equivalent.

(3c) "Family" means a unit consisting of a minor child or children and one or more of their biological parents, adoptive parents, stepparents, or grandparents living together. For purposes of the Work First Program, family also includes a blood or half-blood relative or adoptive relative

limited to brother, sister, great-grandparent, great-great-grandparent, uncle, aunt, great-uncle, great-aunt, great-great-uncle, great-great-aunt, nephew, niece, first cousin, step-brother, and step-sister.

(3d) "Federal TANF funds" means the Temporary Assistance for Needy Families block grant funds provided for in Title IV-A of the Social Security Act.

(3e) "FICA" means the taxes imposed by the Federal Insurance Contribution Act, 26 U.S.C. § 3101, et seq.

~~(3f) "First Stop Employment Assistance" in the program established to assist recipients of Work First Program assistance with employment through job registration, job search, job preparedness, and community service.~~

(3g) "Full-time employment" means employment which requires the employee to work a regular schedule of hours per day and days per week established as the standard full-time workweek by the employer, but not less than an average of 30 hours per week.

(4) Repealed by Session Laws 1983, c. 14, s. 3.

(4a) "Mutual Responsibility Agreement" ("MRA") is an agreement between a county and a recipient of Work First Program assistance which describes the conditions for eligibility for the assistance and what the county will provide to assist the recipient in moving from assistance to self-sufficiency. A MRA may provide for recipient parental responsibilities and child development goals and what a county or the State will provide to assist the recipient in achieving those child development goals. Improvement in literacy shall be a part of any MRA, but a recipient shall not be penalized if unable to achieve improvement. A MRA is a prerequisite for any Work First Program assistance under this Article.

(4b) "Parent" means biological parent or adoptive ~~parent.~~parent, and for Work First purposes, includes a step-parent.

(5) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.

(6) "Resident," unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.

(7) "Secretary" is the Secretary of Health and Human Services, unless the context clearly indicates otherwise.

(8) "Standard Program County" means a county that participates in the Standard Work First Program.

(9) "Standard Work First Program" means the Work First Program ~~development~~ developed by the Department.

(10) "State Plan" is the biennial Work First Program plan, based upon the aggregate of the Electing County Plans and the Standard Work First Program, prepared by the Department for the State's Work First Program pursuant to this Article, and submitted sequentially to the Budget Director, to the General Assembly, to the Governor, and to the appropriate federal officials for approval.

(11) "Temporary" is a time period, not to exceed 60 cumulative months, which meets the federal requirement of Title IV-A.

(12) "Title IV-A" means the Social Security Act, 42 U.S.C. § 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, as further amended by the Deficit

Reduction Act of 2005, P.L. 109-171 and to other provisions of federal law as may apply to assistance provided in this Article.

(13) "Work" is lawful activity exchanged for cash, goods, uses, or services.

(14) "Work First Diversion Assistance" is a short-term cash payment that is intended to substantially reduce the likelihood of a family requiring Work First Family Assistance. Work First Diversion Assistance must be used to address a specific family crisis or episode of need and may not be used for ongoing or recurrent needs. Work First Diversion Assistance is limited to once in a 12-month period.

(15) "Work First Family Assistance" is a program of time-limited periodic payments to assist in maintaining the children of eligible families while the adult family members engage in activities to prepare for entering and to enter the workplace.

(16) "Work First Program" is the Temporary Assistance for Needy Families program established in this Article.

(17) "Work First Program assistance" means the goods or services provided under the Work First Program.

(18) "Work First Services" are services funded from appropriations made pursuant to this Article and designed to facilitate the purposes of the Work First Program."

SECTION 2. G.S. 108A-27 reads as rewritten:

"**§ 108A-27. Authorization and description of Work First Program; Work First Program changes; designation of Electing and Standard Program Counties.**

(a) The Department shall establish, supervise and monitor the Work First Program. The purpose of the Work First Program is to provide eligible families with short-term assistance to facilitate their movement to self-sufficiency through gainful employment, not the mere reduction of the welfare rolls. The Department shall ensure that the Work First Program ~~focus~~ focuses on this purpose of self-sufficiency. The ultimate goal of the Work First Program is the gradual elimination of generational poverty, and the Department shall ensure that all evaluations of the Work First Program, whether performed at the State or the county level, maintain this purpose and this goal of the Work First Program and effect an ongoing determination of whether the Work First Program is successful in facilitating families to move to self-sufficiency and in gradually eliminating generational poverty.

(b) The Work First Program in all counties shall include program ~~administration, First Stop Employment Registration,~~ administration and three categories of assistance to participants:

(1) Work First Diversion Assistance;

(2) Work First Family Assistance; and

(3) Work First Services.

~~All counties shall utilize the registration process of the First Stop Employment Assistance Program. All other provisions of the First Stop Employment Assistance Program shall be optional to the counties.~~

(c) The Department may change the Work First Program when required to comply with federal law. Any changes in federal law that necessitate a change in the Work First Program shall be effected by temporary rule until the next State Plan is approved by the General Assembly. Any change effective by the Department to comply with federal law shall be reported to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services and included in the State Plan submitted during the next session of the General Assembly following the change.

(d) The Department shall allow counties maximum flexibility in the Work First Program while ensuring that the counties comply with federal and State laws and regulations. Subject to any limitations imposed by law, the Department shall allow counties to request to be designated as either Electing Counties or Standard Program Counties in the Work First Program.

(e) All counties shall notify the Department in writing as to whether they desire to be designated as either Electing or Standard Program. A county shall submit in its notification to the Department documentation demonstrating that three-fifths of its county commissioners support its desired designation. Upon receipt of the notification from the county, the Department shall send to the county confirmation of the county's planning designation. A county that desires to be redesignated shall submit a request in writing to the Department at least six months prior to the effective date of the next State Plan. In its request for redesignation, the county shall submit documentation demonstrating that three-fifths of its county commissioners support the redesignation. Upon receipt of the notification from the county, the Department shall send to the county confirmation of the county's planning redesignation. A county's redesignation shall become effective on the effective date of the next State Plan following the redesignation. A county's designation or redesignation shall not be effected except as provided in this Article.

(f) The board of county commissioners in an Electing County shall be responsible for development, administration, and implementation of the Work First Program in that county.

(g) The county department of social services in a Standard Program County shall be responsible for administering and implementing the Standard Work First Program in that county.

(h) The Department and Electing Counties, in developing ~~an Electing County Work First Program or the Standard Work First Program;~~their respective plans, may distinguish among potential groups of recipients on whatever basis necessary to enhance program purposes and to maximize federal revenues, so long as the rights, including the constitutional rights of equal protection and due process, of individuals are protected. The Department and Electing Counties ~~may~~ shall provide Work First Program assistance to ~~legal~~ qualified immigrants on the same basis as citizens to the extent permitted by federal law."

SECTION 3. G.S. 108A-27.2 reads as rewritten:

"**§ 108A-27.2. General duties of the Department.**

The Department shall have the following general duties with respect to the Work First Program:

(1) Ensure that the specifications of the general provisions of the State Plan regarding the procedures required when recipients are sanctioned, prescribed in G.S. 108A-27.9(c), are uniformly developed and implemented across the State;

(1a) Provide technical assistance to ~~counties developing and~~ Electing Counties developing and implementing and to Standard Counties implementing their County Plans, including providing information concerning applicable federal law and regulations and changes to federal law and regulations that affect the permissible use of federal funds and scope of the Work First Program in a county;

(1b) Reserved for future codification purposes.

(1c) Ensure that ~~two-parent~~all families with work eligible parents and parents with children under the age of 12 months receive ~~cash assistance for three months after qualifying for assistance without being subject to pay for performance requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful employment. Cash assistance or diversion assistance received prior to being subject to pay for~~

~~performance requirements is limited to one time within a 12 month period.~~ Work First benefits in the month after compliance with their Mutual Responsibility Agreement. Failure to comply with their Mutual Responsibility Agreement shall result in no Work First Benefits the following month, unless there is good cause.

(2) Describe authorized federal and State work activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years.

(3) Define requirements for assignment of child support income and compliance with child support activities;

(4) Establish a schedule for ~~counties~~ Electing Counties to submit their County Plans to ensure that ~~all Standard County Plans are adopted by the Standard Program Counties by January 15 of each odd-numbered year and~~ all Electing County Plans are adopted by Electing Counties by February 1 of each odd-numbered year and review and then recommend a State Plan to the General Assembly;

(5) Ensure that the Electing County Plans comply with federal and State laws, rules, and regulations, are consistent with the overall purposes and goals of the Work First Program, and maximize federal receipts for the Work First Program;

(6) Prepare the State Plan in accordance with G.S. 108A-27.9 and federal laws and regulations and submit it to the Budget Director for approval;

(7) Submit the State Plan, as approved by the Budget Director, to the General Assembly for approval;

(8) Repealed by Session Laws 2003-284, s. 10.57, effective July 1, 2003.

(9) Develop and implement a system to monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Work First Program on job retention and advancement, child abuse and neglect, caseloads for child protective services and foster care, school attendance, academic and behavioral performance, and other measures of the economic security and health of children and families. The system should be developed to allow monitoring and evaluation of impact based on both aggregated and disaggregated data. State and county agencies shall cooperate in providing information needed to conduct these evaluations, sharing data and information except where prohibited specifically by federal law or regulation;

(10) Monitor the performance of ~~counties~~ Electing Counties relative to their ~~County~~ respective Plans and the overall goals of the Work First ~~Program;~~Program. Monitor Standard Counties relative to the State Plan and the overall goals of the Standard Work First Program;

(11) Repealed by Session Laws 2003-284, s. 10.57, effective July 1, 2003.

(12) Report to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services the counties which have requested Electing status; provide copies of the proposed Electing County Plans to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human

Services, if requested; and make recommendations to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services on which of the proposed Electing County Plans ensure compliance with federal and State laws, rules, and regulations and are consistent with the overall purposes and goals for the Work First Program; and

(13) Make recommendations to the General Assembly for approval of counties to become Electing Counties which represent, in aggregate, no more than fifteen and one-half percent (15.5%) of the total Work First caseload at September 1 of each year and, for each county submitting a plan, the reasons individual counties were or were not recommended.

(14) Review the county Work First Program of each ~~electing county~~ Electing County and recommend whether the county should continue to be designated an ~~electing county~~ Electing County or whether it should be redesignated as a standard county. In conducting its review and making its recommendation, the Department shall:

a. Examine and consider the results of the Department's monitoring and evaluation of the impact of the ~~electing county's~~ Electing County's Work First Program as required under subdivision (9) of this section;

b. Determine whether the ~~electing county's~~ Electing County's Work First Program's unique design requires implementation by an ~~electing county~~ Electing County or whether the Work First Program could be implemented by a county designated as a standard county;

c. Determine whether the ~~electing county's~~ Electing County's Work First Program and policies are unique and innovative in meeting the purpose of the Work First Program as stated under G.S. 108A-27, and State and federal laws, rules, and regulations, as compared to other standard and ~~electing county~~ Electing County Work First programs.

The Department shall make its recommendation and the reasons therefor to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services not later than three months prior to submitting the State Plan to the Commission for review as required under G.S. 108A-27.9(a)."

SECTION 4. G.S. 108A-27.3(a) reads as rewritten:

"(a) The duties of the county boards of commissioners in Electing Counties under the Work First Program are as follows:

(1) Establish county outcome and performance goals based on county economic, educational, and employment factors and adopt criteria for determining the progress of the county in moving persons and families to self-sufficiency;

(2) Establish eligibility criteria for recipients except for those criteria related to sanctioning procedures mandated across the State pursuant to G.S. 108A-27.9(c);

(3) Prescribe the method of calculating benefits for recipients;

~~(4) Determine and list persons and families eligible for the Work First Program;~~

(5) If made a part of the county's Work First Program, develop and enter into Mutual Responsibility Agreements with Work First Program recipients and ensure that the services and resources that are needed to assist participants to comply with the obligations under their Mutual Responsibility Agreements are available;

(6) Ensure that participants engage in the minimum hours of work activities required by Title IV-A;

(7) Consider providing community service work for any recipient who cannot find employment;

(8) ~~Make~~ Authorize payments of Work First Diversion Assistance and Work First Family Assistance to recipients having MRAs;

(9) Monitor compliance with Mutual Responsibility Agreements and enforce the agreement provisions;

~~(10) Monitor and evaluate the impact of the Work First Program on economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance, and report the findings to the Department quarterly;~~

(10a) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:

a. Ensure that time limitations on assistance have been computed correctly.

b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food and nutrition services, for which the family is eligible even while cash assistance is no longer available.

c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.

d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.

(11) Ensure compliance with applicable State and federal laws, rules, and regulations for the Work First Program;

(12) Develop, adopt, and submit to the Department a biennial County Plan;

~~(13) Provide monthly progress reports to the Department in a format to be determined by the Department;~~

(14) Develop and implement an appeals process for the county's Work First Program that substantially complies with G.S. 108A-79 and comply with the procedures related to sanctioning by the Department for all counties in the State pursuant to G.S. 108A-27.2 and prescribed as general provisions in the State Plan pursuant to G.S. 108A-27.9(c)(1)."

SECTION 5. G.S. 108A-27.4 reads as rewritten:

"**§ 108A-27.4. Electing Counties – County Plan.**

(a) Each Electing County shall submit to the Department, according to the schedule established by the Department and in compliance with all federal and State laws, rules, and regulations, a biennial County Plan.

(b) An Electing County's County Plan shall have at least the following five parts:

(1) Part I. Conditions Within the County;

(2) Part II. Outcomes and Goals for the County;

(3) Part III. Plans to Achieve and Measure the Outcomes and Goals;

(4) Part IV. Administration; and

(5) Part V. Funding Requirements.

(c) Funding requirements shall, at least, identify the amount of a county block grant for Work First Diversion Assistance, a county block grant for Work First Family Assistance, a county block grant for Work First Services, and the county's maintenance of effort contribution. A county may establish a reserve.

~~(d) The County Plans in Electing Counties may provide that in cases where benefits are paid only for a child, the case is considered a family case.~~

(e) Each county shall include in its County Plan the following:

~~(1) The number of MRAs entered into by the county;~~

(2) A description of the county's plans for serving families who need child care, transportation, substance abuse services, and employment support based on the needs of the community and the availability of services and funding;

~~(3) A list of the community service programs equivalent to full-time employment that are being offered to Work First Program recipients who are unable to find full-time employment;~~

(4) A description of the county's eligibility criteria, benefit calculation, and any other policies adopted by the county relating to eligibility, terms, and conditions for receiving Work First Program assistance, including sanctions, asset and income requirements, time limits and extensions, rewards, exemptions, and exceptions to requirements. If an Electing County Plan proposes to change eligibility requirements, benefits levels, or reduce maintenance of effort, the county shall describe the reasons for these changes and how the county intends to utilize the maintenance of effort savings;

(5) A description of how the county plans to utilize public and private resources to assist in moving persons and families to self-sufficiency; and

(6) Any request to the Department for waivers to rules or any proposals for statutory changes to remove any impediments to implementation of the County's Plan.

(7) The process by which the county will review all Work First caseloads no later than three months prior to expiration of time limitations for receiving cash assistance to:

a. Ensure that time limitations on assistance have been computed correctly.

b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food and nutrition services, for which the family is eligible even while cash assistance is no longer available.

c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.

d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.

(f) Each county shall provide to the general public an opportunity to review and comment upon its County Plan prior to its submission to the Department.

(g) A county may modify its County Plan once each biennium but not at any other time unless the county notifies the Department of the proposed modification and the Department determines that the proposed modification is consistent with State and federal law and the goals for the Work First Program.

(h) Electing ~~counties~~ Counties shall have an emergency assistance program for Work First eligible families, as defined in the electing county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."

SECTION 6. G.S. 108A-27.5 reads as rewritten:

"**§ 108A-27.5. Electing Counties – Duties of the Department.**

In addition to the general duties prescribed in G.S. 108A-27.3, the Department shall have the following duties with respect to establishing, supervising, and monitoring the Work First Program in Electing Counties while allowing Electing Counties maximum flexibility in designing and implementing County Plans:

~~(1) Coordinate activities of other State agencies providing technical support to counties developing their County Plans;~~

(2) At the request of the counties, provide assistance to counties in their activities with private sector individuals and organizations relative to County Plans; and

(3) Establish the baseline for the State maintenance of effort."

SECTION 7. G.S. 108A-27.6 reads as rewritten:

"**§ 108A-27.6. Standard Program Counties – Duties of county departments of social services and county boards of commissioners.**

(a) Except as otherwise provided in this Article, the Standard Work First Program shall be administered by the county departments of social services. The county departments of social services in Standard Program Counties shall:

(1) In consultation with the Department and the county board of commissioners, establish outcome and performance ~~goals~~ measures for ~~each~~ all Standard Program ~~County, based on economic factors and conditions in that county, aimed at reducing child poverty by means of goals that measure the increased numbers of persons employed, the increased numbers of hours worked by and wages earned by recipients, and other measures of child well-being;~~Counties. There exist two goals for the Work First Program: to meet or exceed the federal Work Participation Rate of fifty percent (50%) for all Work Eligible families and ninety percent (90%) for all two-parent families.

(2) Determine eligibility of persons and families for the Work First Program;

(3) Enter into Mutual Responsibility Agreements with participants if required under the State Plan and ensure that the services and resources that are needed to assist participants to comply with their obligations under their Mutual Responsibility Agreements are available;

(4) Comply with State and federal law relating to Work First and Title IV-A;

~~(5) Develop the County Plans for submission by the counties to the Department;~~

(6) Ensure that participants engage in the minimum hours of work activities required by the State Plan and Title IV-A;

(7) Ensure that the components of the Work First Program are funded solely from authorized sources and that federal TANF funds are used only for purposes and programs authorized by federal and State ~~law;~~law; and

~~(8) Monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Program on the economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance, and report the findings to the Department quarterly; and~~

~~(9) Provide monthly progress reports to the Department, in a format to be determined by the Department.~~

(10) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:

a. Ensure that time limitations on assistance have been computed correctly.

b. Ensure that the family is informed about public assistance benefits, including child care, Medicaid, and food and nutrition services, for which the family is eligible even while cash assistance is no longer available.

c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.

d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.

(b) In consultation with the Department, a county department of social services may delegate any of its duties under this Article to another public agency or private contractor. Prior to delegating any duty, a county department of social services shall submit its proposed delegation to the Department as the Department may provide. Notwithstanding any delegation of duty, a county department of social services shall remain accountable for its duties under the Work First Program.

~~(c) The county board of commissioners shall appoint a committee of individuals to identify the needs of the population to be served and to review and assist in developing the County Plan to respond to the needs. The committee membership shall include, but is not limited to, representatives of the county board of social services, the board of the area mental health authority, the local public health board, the local school systems, the business community, the board of county commissioners, and community based organizations representative of the population to be served.~~

~~(d) The county board of commissioners shall review and approve the County Plan for submission to the Department.~~"

SECTION 8. G.S. 108A-27.7 reads as rewritten:

"**§ 108A-27.7. Standard Program County Plan.**

~~(a) Each Standard Program County shall submit to the Department for approval a biennial County Plan that describes the Work First Diversion Assistance and Work First Services the county proposes to offer.~~

~~(b) Prior to submitting its County Plan to the Department, a county shall provide the public with an opportunity to review and comment upon it.~~

~~(c) The County Plan of a Standard Program County shall include a description of how the county will:~~

~~(1) Utilize both public and private resources to assist in moving persons and families to self sufficiency;~~

~~(2) Serve families who need child care, transportation, substance abuse services, and employment support based on the needs of the community and the availability of services and funding; and~~

~~(3) Address the needs of persons and families in any other areas specified by the Department.~~

~~(d)~~ Standard counties shall have an emergency assistance program for Work First eligible families, as defined in the standard county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."

SECTION 9. G.S. 108A-27.8(a) reads as rewritten:

"(a) The Department shall establish, develop, supervise, and monitor the Standard Work First Program. In addition to its general duties prescribed in G.S. 108A-27.2, the Department shall have the following duties with respect to the Standard Work First Program and the Standard Program Counties:

~~(1) Establish the requirements for the content of County Plans and review and approve the County Plans submitted by the Standard Program Counties;~~

(2) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;
(3) Supervise disbursement of county block grants to the Standard Program Counties for Work First Services;
(4) Make payments of Work First Family Assistance and Work First Diversion Assistance;
~~(5) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;~~
~~(6) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program; and~~
(7) Develop a Mutual Responsibility Agreement for use by Standard Program Counties."

SECTION 10. G.S. 108A-27.9 reads as rewritten:

"**§ 108A-27.9. State Plan.**

(a) The Department shall prepare and submit to the Director of the Budget a biennial State Plan that proposes the goals and requirements for the State and the terms of the Work First Program for each fiscal year. Prior to submitting a State Plan to the General Assembly, the Department shall:

(1) Consult with local government and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from those organizations; and
(2) Upon complying with subdivision (1) of this subsection, submit the State Plan to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services for review.

(b) The State Plan shall consist of generally applicable provisions and two separate sections, one proposing the terms of the Work First Program in Electing Counties, and the other proposing the terms for the Standard Work First Program.

(c) The State Plan shall include the following generally applicable provisions:

(1) Provisions to ensure that recipients who are sanctioned are provided a clear explanation of the sanction and that all recipients, including those under sanction or termination for rules infractions, are fully informed of their right to legal counsel and any other representatives they choose at their own cost;
(1a) Provisions to ensure that no Work First Program recipients, required to participate in work activities, shall be employed or assigned when:
a. Any regular employee is on layoff from the same or substantially equivalent job;
b. An employer terminates any regular employee or otherwise causes an involuntary reduction in the employer's workforce in order to hire Work First recipients; or
c. An employer otherwise causes the displacement of any currently employed worker or positions, including partial displacements such as reductions in hours of nonovertime work, wages, or employment benefits, in order to hire Work First recipients;
(1b) Reserved for future codification purposes.
(1c) Provisions to ensure that ~~two-parent families receive cash assistance for three months after qualifying for assistance without being~~all work eligible parents and all parents with a child under 12 months of age are subject to pay for performance ~~requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful~~

~~employment. Cash assistance or diversion assistance received prior to being subject to pay for performance requirements is limited to one time within a 12 month period.~~requirements. Pay for performance requirements means that the family will receive Work First benefits in the month following a month that they comply with their Mutual Responsibility Agreement. Failure to comply with the Mutual Responsibility Agreement without good cause will result in no Work First benefits in the following month.

(2) Provisions to ensure the establishment and maintenance of grievance procedures to resolve complaints by regular employees who allege that the employment or assignment of a Work First Program recipient is in violation of subdivision (1a) of this subsection, and grievance procedures to resolve complaints by Work First Participants made pursuant to subdivision (3) of this subsection;

(3) Provisions to ensure that Work First Program participants, required to participate in work activities, shall be subject to and have the Work First Program employees in similarly situated work activities, including, but not limited to, wage and hour laws, health and safety standards, and nondiscrimination laws, provided that nothing in this subdivision shall be construed to prohibit Work First Program participants from receiving additional State or county services designed to assist Work First Program participants achieve job stability and self-sufficiency;

(4) A description of eligible federal and State work activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years.

(5) Requirements for assignment of child support income and compliance with child support activities;

(6) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform; and

(7) Anything else required by federal or State law, rule, or regulation to be included in the State Plan.

(d) The section of the State Plan proposing the terms of the Work First Program in Electing Counties shall be based upon the aggregate of the Electing County Plans and shall include ~~the following:~~

~~(1) Allocations of federal and State funds for Electing Counties in the Work First Program including block grants to counties and the allocation of funding for administration not to exceed the federally established limitations on the use of federal TANF funds and the limits imposed under this Article;~~

~~(2) Maintenance of effort and levels of State and county funding for Electing Counties in the Work First Program;~~

~~(3) Federal~~ federal eligibility requirements and a description of the eligibility requirements and benefit calculation in each Electing ~~County; and~~County.

~~(4) A description of the federal, State, and each Electing County's financial participation in the Work First Program.~~

The Department may modify the section in the State Plan regarding Electing Counties once a biennium or except as necessary to reflect any modifications made by an Electing County. Any changes to the section of the State Plan regarding Electing Counties shall be reported 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 within one month following the changes.

(e) The section of the State Plan describing the Standard Work First Program shall include:

(1) Benefit levels, limitations, and payments and the method for calculating benefit levels and payments;

(2) Eligibility criteria, including asset and income standards;

(3) Any exceptions or exemptions proposed to work requirements;

(4) Provisions for when extensions may be granted to a person or family who reaches the time limit for receipt of benefits;

(5) Provisions for exceptions and exemptions to criteria, time limits, and standards;

(6) Provisions for sanctions for recipient failure to comply with program ~~requirements;~~requirements; and

~~(7) Terms and conditions for repayment of Work First Diversion Assistance by recipients who subsequently receive Work First Family Assistance;~~

~~(8) Allocations of federal, State, and county funds for the Standard Work First Program, including county block grants to the counties for Work First Services;~~

~~(9) Levels of State and county funding for the Standard Work First Program;~~

~~(10) Allocation for funding for administration at the State and local level not to exceed the federally established limitations on use of federal TANF funds for program administration; and~~

(11) A description of the Department's consultation with local governments and private sector organizations and a summary of any comments received during the 45-day public comment period.

(f) In addition to those items required to be included pursuant to subsection (e) of this section, the State Plan may include proposals to establish the following as part of the Standard Work First Program:

(1) Demonstration projects in one or more counties to assess the value of any proposed changes in State policy or to test ways to improve programs; and

(2) Requirement that recipients shall be required to enter into and comply with Mutual Responsibility Agreements as a condition of receiving benefits. If provided for in the State Plan, the terms and conditions of Mutual Responsibility Agreements shall be consistent with program purposes, federal law, and availability of funds.

(g) The State Plan may provide for automatic Medicaid eligibility for all Work First Program recipients.

(h) The State Plan may provide that in cases where benefits are paid only for a child, the case is considered a family case."

SECTION 11. G.S. 108A-27.13 reads as rewritten:

"**§ 108A-27.13. Performance standards.**

(a) The Department, in consultation with the county department of social services and county board of commissioners, shall establish ~~acceptable levels of performance for Standard Program Counties in meeting Work First expectations, measured by outcome and performance goals contained in the State Plan.~~outcome and performance measures for all counties, both Electing and Standard. There exist two goals for the Work First Program: to meet or exceed the

federal Work Participation rate of fifty percent (50%) for all Work Eligible families and ninety percent (90%) for all two-parent families. The two goals apply to both Standard and Electing Counties. The Department shall establish monitoring mechanisms and reporting requirements to assess progress toward the goals. The well-being of children and economic factors and conditions within the counties, including the increased numbers of persons employed and increased numbers of hours worked by and wages earned by recipients, shall be considered by the Department.

~~(b) Electing County performance shall be judged upon the county's ability to attain the outcomes and goals established in that county's County Plan.~~

(c) All adult recipients of Work First Program assistance are expected to achieve full-time employment, subject to applicable exceptions. Adult recipients of Work First Program assistance shall comply with the provisions and requirements in their MRAs."

SECTION 12. G.S. 108A-29 reads as rewritten:

"**§ 108A-29. ~~First Stop Employment Assistance; priority~~Priority for employment services.**

~~(a) There is established in the Employment Security Commission a program to be called First Stop Employment Assistance. The Chair of the Employment Security Commission shall administer the program with the participation and cooperation of the Department of Commerce, county boards of commissioners, the Department of Health and Human Services, the Department of Labor, the Department of Crime Control and Public Safety, and the community college system. The responsibilities of each agency shall be specified in a Memorandum of Understanding between the Employment Security Commission and the Department of Health and Human Services, in consultation with the Department of Commerce, the Department of Labor, and the community college system. The Employment Security Commission shall be the presumptive primary deliverer of job placement services for the Work First Program.~~

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register with the ~~First Stop Employment Assistance Program.~~Employment Security Commission for employment services. The point of registration shall be at an office of the Employment Security Commission in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the Employment Security Commission and the local department of social services.

(c) Individuals who are not otherwise exempt shall present verification of registration ~~at the time of applying~~ for Work First Program assistance. Unless exempt, the individual shall not be approved for Work First Program assistance until verification is received. Child-only cases are exempt from this requirement.

(d) Once an individual has registered as required in subsection (c) of this section and upon verification of the registration by the agency or contractor providing the Work First Program assistance, the individual's eligibility for Work First Program assistance may be evaluated and the application completed. Continued receipt of Work First Program benefits is contingent upon successful participation in ~~the First Stop Employment Program,~~employment services in the Mutual Responsibility Agreement, and lack of cooperation and participation in ~~the First Stop Employment Program~~employment services may result in the termination of benefits to the individual.

~~(e) The county board of commissioners shall determine which agencies or nonprofit or private contractors will participate with the Employment Security Commission and the local department of social services in developing the rules to implement the First Stop Employment Program.~~

(f) ~~At the county's option, the Employment Security Commission, in consultation with and with the assistance of the agencies specified in the Memorandum of Understanding described in subsection (b) of this section, shall provide to Work First Program registrants the~~

~~continuum of services available through its Employment Security Commission.~~ Each ~~County Plan may provide that the~~ county department of social services shall enter into a cooperative agreement with the local Employment Security Commission to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the Employment Security Commission by the county department of social services for the cost of providing those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

(g) ~~The Employment Security Commission shall be the primary job placement entity of the Work First Program.~~ The Employment Security Commission shall further assist registrants through job search, job placement, or referral to community service, if contracted to do so.

(h) An individual placed in the Job Search component of the ~~First Stop Employment Program~~ Employment Security Commission or other agency providing Job Search services shall look for work and shall accept any suitable employment. If contracted, the Employment Security Commission shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the Commission, and the Employment Security Commission will monitor these activities. A "job search record" means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly contact with the Employment Security Commission. The Employment Security Commission shall adopt rules to accomplish this subsection.

(i) The Employment Security Commission shall notify all employers in the State of the "Exclusive No-Fault" Referral Service available through the Employment Security Commission to employers who hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the Employment Security Commission shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All individuals referred to jobs through the Employment Security Commission who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

(k) The FEIC shall not be counted as income when eligibility is determined for Work First Program assistance, Medicaid, food and nutrition services, public housing, or Supplemental Security Income.

(l) The Employment Security Commission shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the Employment Security Commission.

(m) An individual who has not found a job within 12 weeks of being placed in the Job Search component of the Program may also be placed in the Community Service component at the county's option.

(n) If after evaluation of an individual the Employment Security Commission believes it necessary, the Employment Security Commission or the county department of social services also may refer an individual to ~~the~~ a Job Preparedness ~~component of the First Stop Employment Program.~~provider. The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs that are already in existence as a part of the Job Preparedness component. Additionally, the

Commission or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the Employment Security Commission, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The Employment Security Commission or Job Preparedness provider shall adopt rules to accomplish this subsection.

(o) The Job Preparedness component of the Program shall last a maximum of 12 weeks unless the recipient is registered and is satisfactorily progressing in a program that requires additional time to complete. Every reasonable effort shall be made to place the recipient in part-time employment or part-time community service if the time required exceeds the 12-week maximum. The county department of social services may contract with service providers to provide the services described in this section and shall monitor the provision of the services by the service providers. Registrants may participate in more than one component at a time.

(p) The Employment Security Commission shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

~~(q) Each county Employment Security Commission local or branch office shall organize a Job Service Employer Committee. The Chairman of the Employment Security Commission shall appoint the Job Service Employer Committee members, each of whom shall serve two-year terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall organize a State Job Service Employer Committee consisting of eight members who shall serve two-year terms. The Chairman of the Employment Security Commission shall appoint the State Job Service Employer Committee members after consultation with the Governor. The Employment Security Commission shall adopt rules and regulations concerning the meeting schedule and the conduct of meetings of each Job Service Employer Committee. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services by the end of each calendar year.~~

~~(r) Each county's Job Service Employer Committee or Workforce Development Board shall continue the study of the working poor, titled "NC WORKS", in their respective counties and shall include the following in the study:~~

~~(1) Determination of the extent to which current labor market participation enables individuals and families to earn the amount of disposable income necessary to meet their basic needs;~~

~~(2) Determination of how many North Carolinians work and earn wages below one hundred fifty percent (150%) of the Federal Poverty Guideline and study trends in the size and demographic profiles of this underemployed group within the respective county;~~

~~(3) Examination of job market factors that contribute to any changes in the composition and numbers of the working poor including, but not limited to, shifts from manufacturing to service, from full-time to part-time work, from permanent to temporary or their contingent employment;~~

~~(4) Consideration and determination of the respective responsibilities of the public and private sectors in ensuring that working families and individuals have disposable income adequate to meet their basic needs;~~

~~(5) Evaluation of the effectiveness of the unemployment insurance system in meeting the needs of low-wage workers when they become unemployed;~~

~~(6) Examination of the efficacy of a State earned income tax credit that would enable working families to meet the requirements of the basic needs budget;~~

~~(7) Examination of the wages, benefits, and protections available to part-time and temporary workers, leased employees, independent contractors, and other contingent workers as compared to regular full-time workers;~~

~~(8) Solicitation, receipt, and acceptance of grants or other funds from any person or entity and enter into agreements with respect to these grants or other funds regarding the undertaking of studies or plans necessary to carry out the purposes of the committee; and~~

~~(9) A request of any necessary data from either public or private entities that relate to the needs of the committee or board.~~

~~Each committee or board shall prepare and submit a report on the finding for the county which it represents by May 1 of each year to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources.~~

(s) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining employment services including training and community service provided by or through State agencies or counties or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons."

SECTION 13. G.S. 108A-29.1(a) reads as rewritten:

"(a) Each applicant or current recipient of Work First Program benefits, determined by a Qualified Professional in Substance Abuse ~~Professional (QSAP)~~ (QPSA) or by a physician certified by the American Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services shall be required, as part of the person's MRA and as a condition to receiving Work First Program benefits, to participate satisfactorily in an individualized plan of treatment in an appropriate treatment program. As a mandatory program component of participation in an addiction treatment program, each applicant or current recipient shall be required to submit to an approved, reliable, and professionally administered regimen of testing for presence of alcohol or drugs, without advance notice, during and after participation, in accordance with the addiction treatment program's individualized plan of treatment, follow-up, and continuing care services for the applicant or current recipient."

SECTION 14. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1409 A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN SIMPLE WIRING ACTIVITIES AND APPLIANCE REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE APPLIANCE IS OF THE SAME ELECTRICAL RATING AND REQUIRES NO CHANGE TO EXISTING ELECTRICAL CIRCUITS AND THE WORK IS PERFORMED BY A LICENSED ELECTRICIAN.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on STATE GOVERNMENT/STATE PERSONNEL.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1409
PROPOSED COMMITTEE SUBSTITUTE H1409-PCS30363-RO-31

Short Title: Building Code Exclusion/Certain Wiring. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN SIMPLE WIRING ACTIVITIES AND APPLIANCE REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE APPLIANCE IS OF THE SAME ELECTRICAL RATING AND REQUIRES NO CHANGE TO EXISTING ELECTRICAL CIRCUITS AND THE WORK IS PERFORMED BY A LICENSED ELECTRICIAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, fixtures (excluding repair or replacement of same capacity), appliances (excluding replacements with the same electrical rating), or equipment (excluding replacements with like wiring and electrical rating), the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. The exclusions from building permit requirements set forth in this paragraph for electrical wiring, devices, fixtures, appliances, and equipment shall apply only to work performed on a one- or two-family dwelling by a person licensed under G.S. 87-43.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 2. G.S. 153A-357(a) reads as rewritten:

"(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any ~~building;~~building.

(2) The installation, extension, or general repair of any plumbing ~~system;~~system.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system; or~~system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical fixtures or devices or for the connection of an existing branch circuit to an electrical appliance that is being replaced, provided that all of the following requirements are met:

a. With respect to appliances, the replacement appliance is placed in the same location and is of the same electrical rating as the original.

b. With respect to electrical fixtures and devices, the replacement is with a fixture or device having the same voltage and amperage.
c. The work is performed by a person licensed under G.S. 87-43.
d. The original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor."

SECTION 3. G.S. 160A-417(a) reads as rewritten:

"(a) No person shall commence or proceed ~~with:~~with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or ~~structure,~~structure.
(2) The installation, extension, or general repair of any plumbing ~~system,~~ system.
(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system, or~~system.
(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except that in any one- or two-family dwelling unit, a permit shall not be required for repair or replacement of electrical fixtures or devices or for the connection of an existing branch circuit to an electrical appliance that is being replaced, provided that all of the following requirements are met:
a. With respect to appliances, the replacement appliance is placed in the same location and is of the same electrical rating as the original.
b. With respect to electrical fixtures and devices, the replacement is with a fixture or device having the same voltage and amperage.
c. The work is performed by a person licensed under G.S. 87-43.

d. The original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor."

SECTION 4. This act becomes effective October 1, 2009.

HOUSE BILL 1409:
Building Code Exclusion/Certain Wiring

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel	**Date:**	May 5, 2009
Introduced by:	Reps. Justice, Grady, Owens, Gibson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H1409-CSRO-31		

SUMMARY: ***House Bill 1409 amends the law governing the State Building Code to exempt certain simple wiring activities and appliance replacement from building permitting requirements when the activity or replacement is of the same electrical rating and requires no change to existing electrical circuits and the work is performed by a licensed electrician. The bill creates the same exemption from local building permitting requirements.***

CURRENT LAW:

Under current law, a building permit is required under the State Building Code or any local variance for any construction, installation, repair, replacement, or alteration in a single family residence if the work involves;

- The addition, repair, or replacement of load bearing structures;
- The addition, (excluding replacement of same size and capacity) or change in the design of plumbing;
- The addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, or equipment;
- The use of materials not permitted by the North Carolina Uniform Residential Building Code; or
- The addition (excluding replacement of like grade of fire resistance) of roofing.

BILL ANALYSIS:

Section 1 of the bill amends the State Building Code law to exclude from the building permit requirement the repair or replacement of electrical wiring, devices, or fixtures of the same capacity, replacement of appliances with the same electrical rating, and replacement of equipment with like wiring and electrical rating. The exclusions apply only to work performed on a one- or two-family dwelling by a licensed electrician.

Section 2 of the bill creates a similar exemption from the county inspection permit requirement for repair or replacement of electrical fixtures or devices, or for the connection of an existing branch circuit to an electrical appliance that is being replaced, if the following conditions are met:

- The replacement appliance is placed in the same location and is of the same electrical rating as the original.

- The replacement of fixtures and devices is with a fixture or device having the same voltage and amperage.
- The work is performed by a licensed electrician.
- The original installation met the version of the State Building Code in effect at the time of installation.

Section 3 of the bill makes and identical change to the law governing municipal inspection permits.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1409-SMRO-72(CSRO-31) v1

HOUSE BILL 1409

Short Title:	Building Code Exclusion/Certain Wiring.	(Public)
Sponsors:	Representatives Justice, Grady, Owens, Gibson (Primary Sponsors); Cleveland, Folwell, Johnson, Justus, Langdon, Lewis, McElraft, Spear, Starnes, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN SIMPLE WIRING ACTIVITIES AND APPLIANCE REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS WHEN THE APPLIANCE IS OF THE SAME ELECTRICAL RATING AND REQUIRES NO CHANGE TO EXISTING ELECTRICAL CIRCUITS AND THE WORK IS PERFORMED BY A LICENSED ELECTRICIAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"**§ 143-138. North Carolina State Building Code.**

...

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the

manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, fixtures (excluding repair or replacement of same capacity), appliances (excluding replacements with the same electrical rating), or equipment (excluding replacements with like wiring and electrical rating), the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. The exclusions from building permit requirements set forth in this paragraph for electrical wiring, devices, fixtures, appliances, and equipment shall apply only to work performed on a one- or two-family dwelling by a person licensed under G.S. 87-43.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code

Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

...."

SECTION 2. G.S. 153A-357 reads as rewritten:

"**§ 153A-357. Permits.**

(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any ~~building;~~building.

(2) The installation, extension, or general repair of any plumbing ~~system;~~system.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system; or~~system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical fixtures or for the connection of an existing branch circuit to an

electrical appliance that is being replaced, provided that all of the following requirements are met:

a. With respect to appliances, the replacement appliance is placed in the same location and is of the same electrical rating as the original.

b. With respect to electrical fixtures, the replacement is with a fixture having the same voltage and amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

...."

SECTION 3. G.S. 160A-417 reads as rewritten:

"**§ 160A-417. Permits.**

(a) No person shall commence or proceed ~~with:~~with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or ~~structure,~~structure.

(2) The installation, extension, or general repair of any plumbing ~~system,~~ system.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system, or~~system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except that in any one- or two-family dwelling unit, a permit shall not be required for repair or replacement of electrical fixtures or for the connection of an existing branch circuit to an

electrical appliance that is being replaced, provided that all of the following requirements are met:

a. With respect to appliances, the replacement appliance is placed in the same location and is of the same electrical rating as the original.

b. With respect to electrical fixtures, the replacement is with a fixture having the same voltage and amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The original installation met the version of the State Building Code in effect at the time of installation.

~~without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor.

...."

SECTION 4. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1511 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A SALES TAX DISCOUNT FOR MERCHANTS.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1511
PROPOSED COMMITTEE SUBSTITUTE H1511-PCS70419-RN-22

Short Title: Merchant's Discount. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SALES TAX DISCOUNT FOR MERCHANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.21 is reenacted and rewritten to read:

"**§ 105-164.21. Merchant's discount.**

(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid a discount of one percent (1%).

(b) Restrictions. – The Secretary may deny a retailer the benefit of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as required by this Article. In order to receive the discount provided in this section, a retailer must deduct the discount when it remits the tax to the Department. A retailer who sells electricity, telecommunications services, or ancillary services may not deduct the discount provided in this section on sales of electricity, telecommunications services, or ancillary services."

SECTION 2. G.S. 105-164.21(a) reads as rewritten:

"(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid a discount of ~~one percent (1%).~~two percent (2%)."

SECTION 3. G.S. 105-164.21(a) reads as rewritten:

"(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid a discount of ~~two percent (2%).~~three percent (3%)."

SECTION 4. G.S. 105-474 reads as rewritten:

"**§ 105-474. ~~Definitions; construction of Article; remedies and penalties.~~Administration and construction of Article.**

This Article shall be administered consistently with Article 5 of this Chapter to the extent practicable. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article. The remaining provisions of Articles 5 and 9 of this Chapter apply to this Article to the extent they are consistent with this Article.

~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such definitions are not inconsistent with the provisions of this Article, and all other provisions of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act shall be applicable to this Article unless~~

~~such provisions are inconsistent with the provisions of this Article. The administrative interpretations made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this Article, may be uniformly applied in the construction and interpretation of this Article. It is the intention of this Article that the provisions of this Article and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.~~

~~The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax authorized to be levied and collected under this Article, to the extent that the same are not inconsistent with the provisions of this Article.~~"

SECTION 5. The first sentence of Section 10 of Chapter 1096 of the 1967 Session Laws is amended by adding after the word 'Act' the phrase ', other than G.S. 105-164.21,'.

SECTION 6. G.S. 105-187.5(d) reads as rewritten:

"(d) Administration. – The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. The merchant's discount provided in G.S. 105-164.21 does not apply to this section.~~In addition, the~~

The Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer."

SECTION 7. G.S. 105-187.17 reads as rewritten:

"**§ 105-187.17. Administration.**

(a) Retail Sale or Use. – The privilege tax this Article imposes on a tire retailer who sells new tires at retail is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new tire in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new tire is sold is a credit against the additional State use tax imposed on the storage, use, or consumption of the same tire.

(b) Wholesale Sale or Use. – The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant who sell new tires for placement in this State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes on a new tire purchased for placement in this State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be collected and administered as if they were additional State sales and use taxes. The privilege tax paid when a new tire is sold for placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or rental.

(c) Discount. – The merchant's discount provided in G.S. 105-164.21 does not apply to this Article."

SECTION 8. G.S. 105-187.22 reads as rewritten:

"**§ 105-187.22. Administration.**

The privilege tax this Article imposes on a white goods retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new white good in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new white good is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same white good. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article."

SECTION 9. G.S. 105-187.32 reads as rewritten:

"**§ 105-187.32. Administration.**

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent."

SECTION 10. Section 1 of this act becomes effective July 1, 2009. Sections 4 through 9 apply to returns filed on or after that date. Section 2 of this act becomes effective January 1, 2010. Section 3 of this act becomes effective January 1, 2011. The remainder of this act is effective when it becomes law.

HOUSE BILL 1511: Merchant's Discount

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	May 6, 2009
Introduced by:	Rep. Moore	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H1511-CSRN-22		Committee Co-Counsel

SUMMARY: House Bill 1511 would provide for a sales tax discount for merchants. The Proposed Committee Substitute changes the effective date ("The remainder of this act is effective when it becomes law") to comply with the drafting convention of applying an effective date for each section.

CURRENT LAW: Until 1987, the State allowed merchants who collected sales and use taxes to retain a discount of 3% from both State and local sales and use taxes. This allowance was known as the "merchant's discount." The General Assembly repealed the discount in the School Facilities Finance Act of 1987 as part of a tax package that repealed the property tax on inventories and raised the corporate income tax from 6% to 7%. Since that time, there have been various bills seeking to restore the merchant's discount.

BILL ANALYSIS:

Section 1 reenacts G.S. 105-164.21 to allow a retailer who pays the retail sales tax or use tax to deduct a 1% discount from the amount of tax paid. It permits the Secretary of Revenue to deny the benefit to a retailer who (1) fails to pay the full tax when due or (2) in cases of fraud, evasion, or failure to keep accurate records. It requires the retailer to deduct the discount when it remits the tax to the Department of Revenue. Finally, it does not allow a retailer who sells electricity, telecommunications services, or ancillary services to deduct the discount for those items. This section becomes effective July 1, 2009.

Section 2 provides that the merchant's discount is raised to 2% beginning on January 1, 2010.

Section 3 raises the discount to 3% beginning on January 1, 2011.

Section 4 makes a number of conforming changes to ensure that various Articles involving taxation apply to the extent that they are consistent.

Sections 5, 6, 7, 8, and 9 make changes to various statutes and session laws to provide that the merchant's discount does not apply to those provisions.

EFFECTIVE DATE: Section 1 of this act becomes effective July 1, 2009. Sections 4 through 9 apply to returns filed on or after that date. Section 2 of this act becomes effective January 1, 2010. Section 3 of this act becomes effective January 1, 2011. The remainder of this act is effective when it becomes law.

BACKGROUND: In 2000, House Bill 1685 was filed to reinstate a 1% merchant's discount. The estimated 2000-2001 fiscal impact of that bill was a reduction of $34.2 million of State General Fund tax revenue. House Bill 1511 is different from the bill filed in 2000 because after the first year, House Bill 1511 raises the merchant's discount to 2% in 2010 and 3% in 2011.

H1511-SMRN-54(CSRN-22) v3

Cindy Avrette contributed substantially to the drafting of this summary.

HOUSE BILL 1511

Short Title:	Merchant's Discount.	(Public)
Sponsors:	Representatives Moore; and Frye.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A SALES TAX DISCOUNT FOR MERCHANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.21 is reenacted and rewritten to read:

"**§ 105-164.21. Merchant's discount.**

(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid a discount of one percent (1%).

(b) Restrictions. – The Secretary may deny a retailer the benefit of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as required by this Article. In order to receive the discount provided in this section, a retailer must deduct the discount when it remits the tax to the Department. A retailer who sells electricity, telecommunications services, or ancillary services may not deduct the discount provided in this section on sales of electricity, telecommunications services, or ancillary services."

SECTION 2. G.S. 105-164.21(a) reads as rewritten:

"(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid a discount of ~~one percent (1%).~~two percent (2%)."

SECTION 3. G.S. 105-164.21(a) reads as rewritten:

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This Article shall be administered consistently with Article 5 of this Chapter to the extent practicable. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article. The remaining provisions of Articles 5 and 9 of this Chapter apply to this Article to the extent they are consistent with this Article.

~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such definitions are not inconsistent with the provisions of this Article, and all other provisions of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act shall be applicable to this Article unless such provisions are inconsistent with the provisions of this Article. The administrative interpretations made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this Article, may be~~

~~uniformly applied in the construction and interpretation of this Article. It is the intention of this Article that the provisions of this Article and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.~~

~~The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax authorized to be levied and collected under this Article, to the extent that the same are not inconsistent with the provisions of this Article.~~"

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SECTION 6. G.S. 105-187.5(d) reads as rewritten:

"(d) Administration. – The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. The merchant's discount provided in G.S. 105-164.21 does not apply to this section.~~In addition, the~~

The Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer."

SECTION 7. G.S. 105-187.17 reads as rewritten:

"**§ 105-187.17. Administration.**

(a) Retail Sale or Use. – The privilege tax this Article imposes on a tire retailer who sells new tires at retail is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new tire in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new tire is sold is a credit against the additional State use tax imposed on the storage, use, or consumption of the same tire.

(b) Wholesale Sale or Use. – The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant who sell new tires for placement in this State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes on a new tire purchased for placement in this State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be collected and administered as if they were additional State sales and use taxes. The privilege tax paid when a new tire is sold for placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or rental.

(c) Discount. – The merchant's discount provided in G.S. 105-164.21 does not apply to this Article."

SECTION 8. G.S. 105-187.22 reads as rewritten:

"**§ 105-187.22. Administration.**

The privilege tax this Article imposes on a white goods retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new white good in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use

taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new white good is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same white good. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article."

SECTION 9. G.S. 105-187.32 reads as rewritten:

"**§ 105-187.32. Administration.**

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent."

SECTION 10. Section 1 of this act becomes effective July 1, 2009. Sections 4 through 9 apply to returns filed on or after that date. Section 2 of this act becomes effective January 1, 2010. Section 3 of this act becomes effective January 1, 2011.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Monday, May 11, 2009
TIME: 2:00 pm
LOCATION: 643 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 593	Change School Starting Date.	Representative Luebke Representative Martha B. Alexander Representative England, M.D. Representative Rapp
HB 615	Business Trusts.	Representative Martin
HB 636	Staff Dev. OK on Protected Teacher Workdays.	Representative Haire
HB 829	Development Tier Exception Modification.	Representative Hill Representative Stiller
HB 1084	Revise LPG Dealer Requirements.	Representative Hill
HB 1169	Enact WARN-NC/Give 90-Day Layoff Notice.	Representative Glazier Representative Lucas Representative Ross Representative Faison
HB 1182	Relocation of Easements.	Representative Haire Representative Spear Representative Randleman
HB 1210	Facilitate Access to Emergency Supplies.	Representative Cole
HB 1265	Identity Theft Warning/Employment Assistance.	Representative Hall Representative Mackey Representative Floyd Representative Wainwright
HB 1289	No Lottery at Check Cashing Sites.	Representative Harrison Representative Fisher

HB 1478	Design Professional Seals/Public Records.	Representative Lucas Representative Samuelson Representative Tillis

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:45 p.m. on **May 07, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

2009-2010

HOUSE COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP

MINUTES

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING
Monday, May 11, 2009
2:00 P.M.
Room 643, LOB

OPENING REMARKS
Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 593	Change School Starting Date	Representative Luebke Rep. Martha B. Alexander Representative England, M.D. Representative Rapp
HB 615	Business Trusts	Representative Martin
HB 636	Staff Dev. OK on Protected Teacher Workdays	Representative Haire
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HB 1084	Revise LPG Dealer Requirements	Representative Hill
HB 1169	Enact WARN-NC/Give 90-Day Layoff Notice	Representative Glazier Representative Lucas Representative Ross Representative Faison
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HB 1265	Identity Theft Warning/Employment Assistance	Representative Hall Representative Mackey Representative Floyd Representative Wainwright
HB 1289	No Lottery at Check Cashing Sites	Representative Harrison Representative Fisher Representative Lucas Representative Samuelson
HB 1478	Design Professional Seals/Public Records	Representative Tillis

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Monday, May 11, 2009
2:00 P.M.
Room 643, Legislative Office Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Monday, May 11, 2009, in Room 1228, Legislative Office Building at 2:00 p.m. The following members were present: Representative Dickson, Chair; Representative Goforth, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Floyd, Frye, Gillespie, Harrell, McGee, Mills, Owens, Pierce, Rapp, Samuelson, Steen, Tarleton, and Warren. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 593 - A BILL TO BE ENTITLED AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS.
Sponsors: Representatives Luebke, M. Alexander, England, and Rapp
Representative Dickson said that in an earlier meeting of this Committee, there was a motion for a favorable report for HB 593; however, the **motion failed**. She said there had been years of discussion on this subject and did not feel there was reason for more discussion from the audience. Representative Allen moved to adopt the proposed committee substitute, and it was adopted. Representative Luebke presented the bill. He said the purpose of the bill was to provide flexibility for local school boards to make the decision as to when the school year should start. Representative Rapp reiterated his comments previously given to the Committee. Representative Goforth moved for a favorable report for the proposed committee substitute for HB 593, unfavorable to the original bill. Representative Blackwood asked for a roll call vote. The bill **passed** by vote of **14-10**. Votes cast were as follows: **YES** = Representatives Allen, Blackwell, Braxton, Cole, Dickson, England, Floyd, Goforth, McGee, Mills, Pierce, Rapp, Warren and Wilkins. **NO** = Representatives Avila, Blackwood, Boles, Brown, Frye, Gillespie, Owens, Samuelson, Steen, and Tarleton.

HB 1210 - A BILL TO BE ENTITLED AN ACT TO FACILITATE OBTAINING FEDERAL WAIVERS THAT ARE NECESSARY TO ENSURE ADEQUATE GASOLINE SUPPLIES THROUGHOUT THE STATE; TO ALLOW THE GOVERNOR TO ENABLE BUSINESSES THAT SELL ITEMS CONSUMED OR USED TO SUSTAIN LIFE, HEALTH, SAFETY, OR ECONOMIC WELL-BEING TO BE EXEMPT FROM LOCAL

CURFEWS; AND TO MAKE VARIOUS OTHER CHANGES THAT WILL FACILITATE POPULACE ACCESS TO EMERGENCY SUPPLIES AND SERVICES.
Sponsor: Representative Cole
Representative Cole explained the bill. He said that it came from the North Carolina Retail Merchant's Association and the organization of Petroleum Marketers and Convenience Store Operators. He said the bill was patterned after a bill that passed the Legislature in Florida to deal with emergency management situations relating to being able to deliver products and food to those facilities and also to facilitate those making efforts to restore public utilities within that area. Representative Wilkins moved for a favorable report for HB 1210. The motion passed.

HB 615 - A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS. Sponsor: Representative Martin
Representative Martin presented the bill at the request of the North Carolina Bar Association. The purpose of the bill was to make real estate transactions in North Carolina easier. He said that Representative Gillespie had an amendment to offer which he fully supported. The Chair recognized Representative Gillespie to bring forth the amendment. He said the purpose of the amendment was to clarify language and the Bar Association supported it. Representative Gillespie moved for adoption of the amendment. The amendment was adopted. Representative Blackwood moved for a favorable report for HB 615 as amended and rolled into a new committee substitute. The motion passed.

HB 636 - A BILL TO BE ENTITLED AN ACT TO MODIFY THE SCHOOL CALENDAR LAW TO ALLOW LOCAL BOARDS OF EDUCATION TO EXTEND THE CLOSING DATE FOR STUDENTS BY THREE DAYS UNTIL JUNE 13 TO PROVIDE FOR MAKEUP DAYS DUE TO INCLEMENT WEATHER OR EMERGENCY CONDITIONS AND IF ADDITIONAL MAKEUP DAYS ARE STILL NEEDED, TO USE UP TO TWO PROTECTED TEACHER WORKDAYS. Sponsor: Representative Haire
Representative Haire presented the bill. He met with the School Board Association, NCAE, and school administrators, and there was no opposition to the bill from school administrators. Representative Floyd moved for a favorable report for HB 636. Representative Blackwood called for a roll call vote. The motion **passed 19-1**. Votes cast were as follows: **YES** = Representatives Avila, Blackwell, Boles, Braxton, Brown, Dickson, Floyd, Frye, Gillespie, Harrell, McGee, Mills, Owens, Rapp, Samuelson, Steen, Tarleton, Warren, and Wilkins. **NO** = Representative Blackwood.

HB 1182 - A BILL TO BE ENTITLED AN ACT AUTHORIZING CLERKS OF THE SUPERIOR COURTS OF THIS STATE TO DETERMINE WHETHER AN EASEMENT SHOULD BE RELOCATED IN A SPECIAL PROCEEDING.
Sponsors: Representatives Haire, Spear, Randleman
Representative Avila moved to adopt the proposed committee substitute, and it was adopted. Representative Haire presented the bill and directed the Committee's attention to the bill analysis. Discussion followed. Representative Wilkins moved for a favorable report for the committee substitute for HB 1182, unfavorable to the original bill and that the bill be re-referred to the Committee on Judiciary III. There was a show of hands vote tied at 9-9. The Chair voted in favor of the bill. The motion **passed 10-9**.

HB 829 - A BILL TO BE ENTITLED AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.
Sponsors: Representative Hill and Representative Stiller
Representative Hill presented HB 829. He said that Columbus and Brunswick Counties were building a two-county industrial park and desired to take advantage of the lower tier designation of Columbus County which is a tier 1 county. Brunswick is a tier 3 county. The industrial park would be the first at-port distribution center in North Carolina. Discussion followed. Representative Owens moved for a favorable report for HB 829 with a re-referral to the Committee on Finance. The motion passed.

HB 1084 - A BILL TO BE ENTITLED AN ACT TO AMEND THE LIQUEFIED PETROLEUM GAS LAW TO CREATE CLASSES OF DEALERS FOR THE PURPOSE OF INSURANCE REQUIREMENTS, TO CLARIFY THE AUTHORITY TO CONDUCT INSPECTIONS, TO INCREASE CIVIL PENALTIES, AND TO MAKE TECHNICAL CHANGES. Sponsor: Representative Hill
Representative Hill presented HB 1084 and said that it was requested by the Department of Agriculture. It was an agency bill and increased the insurance requirements for the Liquefied Petroleum Gas dealers who transport LP gas. It requires an inspection of the LP gas containers and the installation by Agriculture Commissioner, and increased the civil penalties for dealer violations. Discussion followed. Representative Braxton moved for a favorable report for HB 1084. The motion passed.

HB 1169 – A BILL TO BE ENTITLED AN ACT ENACTING THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT OF NORTH CAROLINA TO ROVIDE THAT NORTH CAROLINA WORKERS RECEIVE NINETY DAYS' ADVANCE NOTICE OF MASS LAYOFF AND PLANT CLOSINGS. Sponsors: Representatives Glazier, Lucas, Ross, and Faison
Representative Owens moved for adoption of the proposed committee substitute, and it was adopted. Representative Glazier explained the proposed committee substitute. Representative Warren offered an amendment. The amendment was adopted. George Ports, Capital Associated Industries, one of three employees associations in the state, appeared before the Committee and opposed the bill. Bill Rowe, NC Justice Center, represents low-income citizens and laid-off workers in the state and was in favor of the bill. Representative Harrell moved that HB 1169 be moved from the Committee without prejudice and be enrolled into a new proposed committee substitute. By a show of hands vote of **5** in the **affirmative** and **10** in the **negative**, the motion **failed**.

HB 1265 - A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT PRIVATE PERSONNEL SERVICES, JOB LISTING SERVICES, AND INDIVIDUALS PROVIDE A NOTICE TO POTENTIAL CUSTOMERS CONCERNING IDENTITY THEFT.
Sponsors: Representatives Hall, Mackey, Floyd, Wainwright
Representative Hall explained HB 1265. The bill would provide a statement that will be above the person's signature when applying for jobs at personnel agencies or employment placement agencies that will inform them of their rights and protections regarding ID theft in North Carolina. Representative Wilkins moved for a favorable

report for HB 1265 with a re-referral to the Committee on Judiciary I. The motion passed.

HB 1478 - A BILL TO BE ENTITLED AN ACT TO PROTECT THE SEAL OF A LICENSED DESIGN PROFESSIONAL IN BUILDING INSPECTION DOCUMENTS.
Sponsor: Representative Tillis
Representative Tillis explained HB 1478 and said that it came from staff of his county. The bill would protect the seal of a licensed design professional in building inspection documents. Representative Samuelson moved for a favorable report for HB 1478 and that it be re-referred to the Committee on Judiciary III. The motion passed.

HB 1289 - A BILL TO BE ENTITLED AN ACT TO FORBID CONTRACTING AS LOTTERY RETAILERS BUSINESSES WHO PRIMARILY CASH CHECKS, DRAFTS, OR MONEY ORDERS.
Sponsors: Representatives Harrison, Fisher, Lucas, and Samuelson
Representative Samuelson presented HB 1289. She explained that the bill said if you are a site that is primarily involved in check cashing that you cannot also sell lottery tickets. Discussion followed. Representative Harrell moved for a favorable report. The motion passed.

The meeting adjourned.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Nieves	NC Department of Commerce
John Monaghan	Piedmont Natural Gas Co.
[illegible]	CAA
Chip Killian	Nelson Mullins
Rob Alley	Nelson Mullins
Tom Shaheen	Lottery
Alice Garland	Lottery
Daniel Baum	K+L Gates
Zach Pritchett	CAA
Kim Crowder	NCBA
Katherine Wilkerson	Lynch+Eckfarman

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anthony Allen	NCACC
Debra DeCamillis	UNC-IOG
Art Smith	NCDOL
Jennifer Haywood	NCDOL
Jim Stegall	U.C.P.S.
Nancy Thompson	Meyerhaeuser
[illegible]	NCPCM
[illegible]	NRPC
Josie Mannheim	CMS
Amy Hamm	NCPCM
Jim Hobbs	~~PA~~NC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken McHoney	K.M.A.
R Paul Wilms	WGR
Gregg Thompson	MFIB
Marge Freeman NCAE	NCAE
Evelyn Henderson	DHSR
Bob Sherman	NCFA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rodney Ellis	NCAE
Emily Doyle	NCPAPA
Katherine Joyce	NCASA
Brian Lewis	NCAE
LeeAnn Winner	NCSBA
George Parks	CAI / IECNC
Johanna Reese	DOT
Carol Vandenbergh	PENC
JAYNE Simpkins	NCPGA
Fred Bone	Bone & Asso.
Ray Starling	NCDA&CS

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Coley	NC CWA
Bill Rowe	NC Justice Center
Mary B McMillan	NC AFL-CIO
Louisa Warren	NC Justice Center
Cody Thomas	NC Assn of REALTORS
Joe Stewart	NCCE Chamber
Steve Brewer	EMBARQ
Connie Wilson	NCTIA
Jon Carr	NC Restaurant + Lodging Assoc.
David Hunter	Smoky Mt Host
Amy Schilder	MWC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 11, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Louise Lee	Save Our Summers - NC
David Rose	MWC
Chris Valauri	Valauri Group LLC
Lu-Ann Bynum	MCIC
George Suddath	PBV
Kathy Hawkins	Progress Energy
Richard Thompson	Dominion
Tommy McDowell	Greensboro
JOHN GOODMAN	NC CHAMBER
Steven Levitas	Kilpatrick Stockton

House Pages

Commerce, Small Business
Name of Committee ~~Entrepreneurship~~ **Date:** 5/11/09
Room 643

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

Name: Fred Hines

2. Name: Jerald Perry

3. Name: Rod Finger
Charles Williams

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 593 A BILL TO BE ENTITLED AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS.

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

(FOR JOURNAL USE ONLY)

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

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

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

ROLL CALL VOTE

14___ 10__ = 24____(TOTAL) HB# _593
YES NO SB# _____

HOUSE STANDING COMMITTEE ON __Commerce, Small Business and Entrepreneurship 05-11-09

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	____	ADAMS	__X_	____	RAPP
__X	____	ALLEN	____	X_	SAMUELSON
____	____		____	____	STARNES
____	__X_	AVILA	____	_X_	STEEN
__X_	____	BLACKWELL	____	____	STEWART
____	__X_	BLACKWOOD	____	X__	TARLETON
____	__X_	BOLES	__X_	____	WARREN
_X__	____	BRAXTON	__X	____	WILKINS
____	__X_	BROWN	____	____	WRAY
____	____	CARNEY	____	____	
_ X_	____	COLE	____	____	
__X_	____	DICKSON	____	____	
__X_	____	ENGLAND	____	____	
____	____	FARMER-BUTTERFIELD	____	____	
_ X_	____	FLOYD	____	____	
____	__X_	FRYE	____	____	
____	__X_	GILLESPIE	____	____	
__X_	____	GOFORTH	____	____	
____	____	HARRELL, T.	____	____	
____	____	HOLLOWAY	____	____	
__X_	____	McGEE			
__X_	____	MILLS			
____	__X_	OWENS			
__X_	____	PIERCE			

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 593
PROPOSED COMMITTEE SUBSTITUTE H593-PCS30379-RQ-27

Short Title: Change School Starting Date. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO CONDUCT A PUBLIC HEARING BEFORE DETERMINING THE OPENING AND CLOSING DATES FOR THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this ~~section.~~ section after conducting a public hearing. Except for year-round schools, the opening date for students shall not be before ~~August 25, and~~ the second Monday in August; the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2010-2011 school year.

HOUSE BILL 593:
Change School Starting Date

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 8, 2009
Introduced by:	Reps. Luebke, M. Alexander, England, Rapp	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	PCS to First Edition H593-CSRQ-27		

SUMMARY: ***House Bill 593 would change the school start date for students from no earlier than August 25 to no earlier than the second Monday in August.***

The Proposed Committee Substitute (PCS) requires local boards of education to conduct a hearing before determining the opening and closing dates for the public schools and changes the effective date of the bill to have it apply beginning with the 2010-2011 school year.

CURRENT LAW: G.S. 115C-84.2(d) establishes the opening and closing dates for public schools. Except for year-round schools, the opening date for students must not be before August 25 and the closing date for students must not be after June 10. The State Board of Education may grant waivers from the August 25 and June 10 opening and closing dates for the following reasons:

- A showing of good cause. "Good cause" means schools in the local school administrative unit have been closed 8 days per year during any 4 of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.
- An educational purpose. "Educational purpose" means that a local school administrative unit establishes a need to adopt a different calendar for:
    - a specific school to accommodate a special program offered generally to students in that school;
    - a school that primarily serves a special population of students; or
    - a defined program within a school.

The State Board may grant the waiver for an educational purpose to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the August 25 and June 10 opening and closing dates. The law prohibits the use of a waiver request for an educational purpose to accommodate system-wide class scheduling preferences.

BILL ANALYSIS: House Bill 593 would amend the school calendar law (G.S. 115C-84.2) by moving the school opening date for students to no earlier than the second Monday in August. This change would make the school opening date for students about two weeks earlier than the current no earlier than August 25 requirement. Local boards of education are required to conduct a public hearing before determining the opening and closing dates for schools.

EFFECTIVE DATE: This act would become effective when it becomes law and would apply beginning with the 2010-2011 school year.

BACKGROUND: Beginning in 1943, North Carolina statutes have required a 180 day public school year. Prior to 2004, local boards of education determined the opening and closing dates of the school year, with no dates specified in statute. S.L. 2004-180 amended the statute to establish August 25th as the earliest school start date and June 10th as the latest school closing date for students. The new law also allows the State Board of Education to grant waivers upon a showing of good cause or educational purpose by the local school administrative unit.

Please see the back of this page for additional information on the school calendar.

H593-SMRQ-74(CSRQ-27) v1

**Dr. Shirley Iorio, Policy Analyst for House Education, significantly contributed to this summary.*

Public School Calendar

G.S. 115C-84.2 is the statute which established the parameters of the school calendar. Local boards of education must adopt a school calendar which meets the following criteria:

- Must be 215 days, all of which fall within the fiscal year.
- Must include a minimum of 180 days and 1000 hours of instruction covering at least 9 calendar months.
- Must include a plan for making up days and instructional hours missed due to inclement weather.
- Must include a minimum of 10 annual vacation leave days.
- Must include the same or an equivalent number of legal holidays occurring within the school calendar year as those designated by the State Personnel Commission for state employees.
- Must include five days designated for use as protected teacher workdays.

All other days must be scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purpose.

The total number of teacher workdays for teachers employed for a 10 month term may not exceed 195 days.

The calendar must include at least 42 consecutive days when teacher attendance is not required unless the school is a year-round school or the teacher is employed for an excess of 10 months.

School may not be held on Sundays.

Veteran's Day must be a holiday for all public school personnel and students.

Except for year-round schools, the opening date of school for students may not be before August 25, and the closing date for students may not be after June 10. The statute provides for waivers by the State Board of Education from this requirement in certain circumstances related to emergency situations or educational purposes.

Teacher Workdays in the School Calendar

The statute includes the following specifics related to teacher workdays.

The calendar must include 5 protected workdays for teachers to complete instructional and administrative duties. The LEA may not impose additional tasks on teachers on those days. One of the 5 days must be scheduled at the beginning of the school year, and one must be scheduled at the end of each academic quarter.

Other teacher workdays may be scheduled in the local board's discretion.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 593

Short Title:	Change School Starting Date.	(Public)
Sponsors:	Representatives Luebke, M. Alexander, England, Rapp (Primary Sponsors); Carney, Fisher, Goforth, Hall, Harrison, Insko, R. Warren, and Weiss.	
Referred to:	Education, if favorable, Commerce, Small Business, and Entrepreneurship.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE SCHOOL STARTING DATE FOR STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2(d) reads as rewritten:

"(d) Opening and Closing Dates. – Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before ~~August 25, and~~ the second Monday in August; the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1210 **A BILL TO BE ENTITLED AN ACT TO FACILITATE OBTAINING FEDERAL WAIVERS THAT ARE NECESSARY TO ENSURE ADEQUATE GASOLINE SUPPLIES THROUGHOUT THE STATE; TO ALLOW THE GOVERNOR TO ENABLE BUSINESSES THAT SELL ITEMS CONSUMED OR USED TO SUSTAIN LIFE, HEALTH, SAFETY, OR ECONOMIC WELL-BEING TO BE EXEMPT FROM LOCAL CURFEWS; AND TO MAKE VARIOUS OTHER CHANGES THAT WILL FACILITATE POPULACE ACCESS TO EMERGENCY SUPPLIES AND SERVICES.**

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 1210:
Facilitate Access to Emergency Supplies

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 9, 2009
Introduced by:	Rep. Cole	**Prepared by:**	Karen Cochrane-Brown Committee Co-Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1210 would amend the North Carolina Emergency Management Act of 1977 to authorize the Governor to 1) waive curfew and related travel restrictions during a state of disaster, and 2) waive motor carrier maximum hours of service limits set by the Department of Crime Control and Public Safety, for persons transporting essentials in commerce to a curfew area or assisting in restoring utility services.***

The bill would also direct the Secretary of the Department of Crime Control and Public Safety to develop a certification system for these persons, and would direct the Governor, when an abnormal market disruption has been declared, to seek waivers under the federal Clean Air Act to facilitate the transport of fuel within the State to address or prevent a fuel supply emergency.

BILL ANALYSIS: House Bill 1210 would amend the North Carolina Emergency Management Act of 1977 to authorize the Governor to do the following:

1) Waive curfew and related travel restrictions during a state of disaster, and
2) Waive motor carrier maximum hours of service limits set by the Department of Crime Control and Public Safety pursuant to G.S. 20-381, for persons transporting essentials in commerce to a curfew area or assisting in restoring utility services.

The bill would also direct the Secretary of the Department of Crime Control and Public Safety to develop a certification system:

- For persons transporting essentials in commerce to a curfew area or assisting in restoring utility services.
- That allows for predisaster declaration and postdisaster declaration certification, and may allow for annually renewable precertification.
- That only allows those who routinely transport or distribute essentials or assist in restoring of utility services to be certified.

The bill would also direct the Governor, when the Governor has declared the existence of an abnormal market disruption, to seek specifically identified waivers under the federal Clean Air Act (42 USC 7401, et. Seq.) to facilitate the transport of fuel within the State to address or prevent a fuel supply emergency.

The bill includes definitions of the terms curfew, curfew area, and essentials, for the purposes of the new section.

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

'en Popkin, counsel to House Homeland Security, Military, and Veterans Affairs, substantially contributed to this summary.

H1210-SMRO-82(e1) v1

HOUSE BILL 1210

Short Title:	Facilitate Access to Emergency Supplies.	(Public)
Sponsors:	Representatives Cole; Barnhart, Gibson, Goforth, Killian, Lucas, Steen, Tarleton, and Wray.	
Referred to:	Homeland Security, Military, and Veterans Affairs, if favorable, Commerce, Small Business, and Entrepreneurship.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO FACILITATE OBTAINING FEDERAL WAIVERS THAT ARE NECESSARY TO ENSURE ADEQUATE GASOLINE SUPPLIES THROUGHOUT THE STATE; TO ALLOW THE GOVERNOR TO ENABLE BUSINESSES THAT SELL ITEMS CONSUMED OR USED TO SUSTAIN LIFE, HEALTH, SAFETY, OR ECONOMIC WELL-BEING TO BE EXEMPT FROM LOCAL CURFEWS; AND TO MAKE VARIOUS OTHER CHANGES THAT WILL FACILITATE POPULACE ACCESS TO EMERGENCY SUPPLIES AND SERVICES.

The General Assembly of North Carolina enacts:

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

"**§ 166A-6.03. Ensuring availability of emergency supplies and utility services.**

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum of hours of service prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary of Crime Control and Public Safety shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both predisaster declaration and postdisaster declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.

(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.

(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

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

(1) Curfew. – Any restriction on ingress and egress to an area that is covered by a state of disaster declared pursuant to this Article or a locally declared state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, or any restriction on the movement of persons within such an area.

(2) Curfew area. – The area that is subject to a curfew.

(3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary of Crime Control and Public Safety shall determine what goods constitute essentials for purposes of this section."

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

HANDOUT #1

Support HB 1210
Facilitate Access to Emergency Supplies

Sponsor: Representative Nelson Cole (D-Rockingham)

HB 1210 provides that the Secretary of Crime Control would create a system to allow retailers access to their stores during an emergency and during curfews.

Florida has had vast experience with disaster recovery and was used as a template for much of this legislation to ensure that water, generators and other supplies that are necessary but often scarce during time of disaster, are able to get to their destination as efficiently as possible.

HB 1210 provides for efficiencies in the following ways:

- If curfews have been imposed, HB 1210 allows the Governor to declare by executive order that persons **transporting essential items** or **restoring utility** services **be allowed to enter or remain in those otherwise restricted areas**.
    - *Camden County has issued a 9pm curfew, but utility line workers still have work to do or if Lowe's has generators to deliver – they are able to remain in the area*

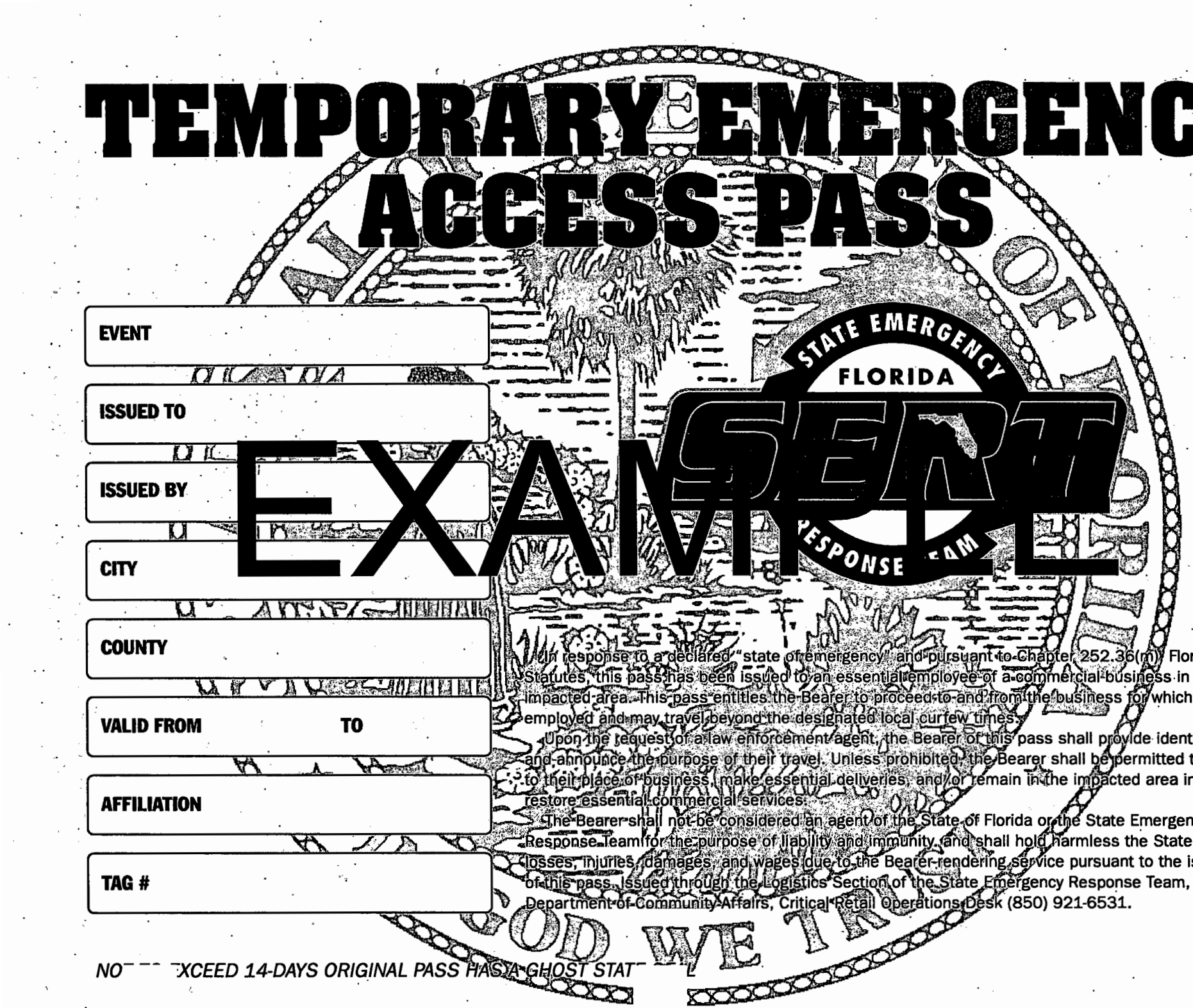
- Allows that the aforementioned executive order also **waive the maximum of hours of service** prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules for persons transporting essentials or assisting in the restoration of utility services.
    - *Fuel lines are backed up for hours at gas stations and truck drivers are in line carrying necessary materials to aid disaster victims. If the truck driver has exceeded the maximum hours of service they are allowed, they would still be allowed to complete their delivery.*

- **Creates a Certification System** through the Secretary of Crime Control and Public Safety. The bill only allows those who routinely transport or distribute essentials or assist in the restoring of utility services are to be certified. They would be distinguished by an **easily recognizable placard** of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.
    - *Florida has an "Emergency Access Pass" that is password-protected and becomes activated for necessary workers and suppliers. The passes are recognized by law enforcement and allow suppliers and workers to enter restricted areas and travel after curfews to aid disaster-impacted areas.*

- Provides that the Governor **file for a waiver with the EPA to bring additional types of gasoline into North Carolina** upon the declaration of an abnormal market condition involving petroleum.
    - *This section is intended to remedy the situation that occurred in 2008 when Maryland, Washington D.C. and Virginia all filed for waivers with the EPA and were able to obtain gasoline while North Carolina ended up with little to no fuel in Charlotte, Asheville and most of Western North Carolina to the detriment of travel and tourism, the economy and schools.*

North Carolina Retail Merchants Association (NCRMA) • Created *by* Retailers *for* Retailers • Tel: (919) 832-0811; Fax: (919) 832-0812
Fran Preston, President • Andrew Ellen, General Counsel • Elizabeth Dalton, Director of Government Relations

TEMPORARY EMERGENCY ACCESS PASS



EVENT

ISSUED TO

ISSUED BY

CITY

COUNTY

VALID FROM **TO**

AFFILIATION

TAG #

In response to a declared "state of emergency" and pursuant to Chapter 252.36(m) Florida Statutes, this pass has been issued to an essential employee of a commercial business in the impacted area. This pass entitles the Bearer to proceed to and from the business for which they are employed and may travel beyond the designated local curfew times.

Upon the request of a law enforcement agent, the Bearer of this pass shall provide identification and announce the purpose of their travel. Unless prohibited, the Bearer shall be permitted to proceed to their place of business, make essential deliveries, and/or remain in the impacted area in order to restore essential commercial services.

The Bearer shall not be considered an agent of the State of Florida or the State Emergency Response Team for the purpose of liability and immunity and shall hold harmless the State for all losses, injuries, damages, and wages due to the Bearer rendering service pursuant to the issuance of this pass. Issued through the Logistics Section of the State Emergency Response Team, Florida Department of Community Affairs, Critical Retail Operations Desk (850) 921-6531.

NO[illegible]XCEED 14-DAYS ORIGINAL PASS HAS A GHOST STAT[illegible]L

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 615 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

☒ With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 615
Committee Substitute Favorable 5/5/09
PROPOSED COMMITTEE SUBSTITUTE H615-PCS80425-RN-27

Short Title: Business Trusts. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-44 reads as rewritten:

"**§ 39-44. Definition.**

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including ~~but not limited to~~an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust, engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest."

SECTION 2. G.S. 39-46 reads as rewritten:

"**§ 39-46. Title vested; conveyance; probate.**

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority."

SECTION 3. This act becomes effective October 1, 2009, and applies to all instruments recorded on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 615

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

H615-ARN-8 [v.1]

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

Date May 11 ,2009

Representative Gillespie

moves to amend the bill on page 2, line 20, by deleting the word "potential".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

"This PCS simply deleted the word potential which appeared on pg. 2, line 25 of this draft."

PCS 80425

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 615
Committee Substitute Favorable 5/5/09
PROPOSED COMMITTEE SUBSTITUTE H615-CSRN-27 [v.1]

5/11/2009 3:55:20 PM

Short Title: Business Trusts. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-44 reads as rewritten:

"**§ 39-44. Definition.**

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including ~~but not limited to~~ an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust, engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest."

SECTION 2. G.S. 39-46 reads as rewritten:

"**§ 39-46. Title vested; conveyance; probate.**

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority."

SECTION 3. This act becomes effective October 1, 2009, and applies to all instruments recorded on or after that date.

MAY 1 1 2009

HOUSE BILL 615: Business Trusts

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 11, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 615 expands the definition of a business trust to specifically include Illinois land trusts and Delaware statutory trusts. It also amends the provisions of the law governing the conveyance of an interest in real property by a business trust.***

CURRENT LAW: Business trusts are governed under Article 8 of Chapter 39 of the General Statutes. A business trust is an unincorporated business organization that operates under a declaration of trust or other written instrument. Generally, property is conveyed to trustees who hold title to and manage the property for the beneficiaries. The beneficial interest is usually represented by transferable shares.[1] A classic example of a business trust is a real estate investment trust (REIT). A Massachusetts business trust is one common form of business trust.

According to Black's, an Indiana land trust is "a land ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust."

A Delaware statutory trust is a business trust created pursuant to Delaware statutes, 12 Del. C. §3801, et seq.

G.S. 39-46 governs the conveyance of real property by a business trust. An interest in real property may be conveyed, encumbered, or otherwise disposed of in the business trust's name by an instrument signed by at least one of the trustees, its president or vice president, or other authorized officer and attested or countersigned by another officer and sealed. Dispositions made in this matter pass good and sufficient title to the property if a memorandum of the declaration of trust is recorded in the county in which the land is located.

BILL ANALYSIS:

Section 1 amends the definition of "business trust" to specifically include Indiana land trusts and Delaware statutory trusts.

Section 2 amends G.S. 39-46 in several respects.

1. It deletes the requirement that an instrument conveying real property held by the business trust be attested or countersigned and sealed. The intent is to update the requirements for conveyance in accordance with the requirements for corporations.

2. The memorandum of the declaration of trust required to be filed in the county in which the land is located may contain a designation of trustees and authorized officers and their authority in real property matters.

3. A new subdivision (b) is created. Subdivision (b):

[1] See, 12A, CJS Business Trusts, p.392-394 (2004). CJS also notes "Business Trusts are distinguished from ordinary trusts by the fact that they are organized to make a profit, rather than to preserve property or facilitate its transfer."

- Allows the conveyance of an interest in real property by an officer of the business trust, other than those identified in subdivision (a), if the conveyance has attached a resolution of the Board of Trustees authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments.
- One can also comply with this section by recording the resolution separately at the register of deeds office in the county where the land is located.
- A signed resolution is not required in the case of an instrument signed by a trustee, president, vice president, or assistant vice president.
- As long as there is nothing contrary in the trust agreement or provision in the memorandum or declaration of trust providing otherwise, if the instrument registered at the register of deeds office appears on its face to have been signed in the ordinary course of business by a trustee, president, vice president, or assistant vice president on behalf of the business trust, the instrument will be valid with respect to the rights of innocent third parties for value.

4. New subsection (c) provides that the Section does not exclude the power of a representative of the business trust to bind the trust pursuant to express or implied authority or other means.

5. New subsection (d) provides that the Section does not relieve a trustee or other officer of a business trust from liability incurred through a violation of their actual authority.

EFFECTIVE DATE: The act becomes effective October 1, 2009 and applies to instruments recorded on or after that date.

H615-SMRN-60(e2) v4

Barbara Riley contributed substantially to the drafting of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 615
Committee Substitute Favorable 5/5/09

Short Title: Business Trusts. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-44 reads as rewritten:

"**§ 39-44. Definition.**

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including ~~but not limited to~~an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust, engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest."

SECTION 2. G.S. 39-46 reads as rewritten:

"**§ 39-46. Title vested; conveyance; probate.**

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of

trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a potential breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority."

SECTION 3. This act becomes effective October 1, 2009, and applies to all instruments recorded on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Committee Substitute for

HB 636 A BILL TO BE ENTITLED AN ACT TO MODIFY THE SCHOOL CALENDAR LAW TO ALLOW LOCAL BOARDS OF EDUCATION TO EXTEND THE CLOSING DATE FOR STUDENTS BY THREE DAYS UNTIL JUNE 13 TO PROVIDE FOR MAKEUP DAYS DUE TO INCLEMENT WEATHER OR EMERGENCY CONDITIONS AND IF ADDITIONAL MAKEUP DAYS ARE STILL NEEDED, TO USE UP TO TWO PROTECTED TEACHER WORKDAYS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

ROLL CALL VOTE

__19_ YES _1__ NO = ___20___(TOTAL)

HB# 636
SB# _____

HOUSE STANDING COMMITTEE ON __Commerce, Small Business and Entrepreneurship 05-11-09

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
____	____	ADAMS	_X__	____	RAPP
____	____	ALLEN	_X__	____	SAMUELSON
____	____		____	____	STARNES
__X_	____	AVILA	X_	____	STEEN
__X_	____	BLACKWELL	____	____	STEWART
____	__X_	BLACKWOOD	__X_	____	TARLETON
__X_	____	BOLES	__X_	____	WARREN
__X_	____	BRAXTON	__X_	____	WILKINS
__X_	____	BROWN	____	____	WRAY
____	____	CARNEY	____	____	
____	____	COLE	____	____	
__X_	____	DICKSON	____	____	
____	____	ENGLAND	____	____	
____	____	FARMER-BUTTERFIELD	____	____	
__X_	____	FLOYD	____	____	
__X_	____	FRYE	____	____	
__X_	____	GILLESPIE	____	____	
____	____	GOFORTH	____	____	
_ X_	____	HARRELL, T.	____	____	
____	____	HOLLOWAY	____	____	
__X_	____	McGEE			
__X_	____	MILLS			
__X_	____	OWENS			
____	____	PIERCE			

HOUSE BILL 636:
Sch Cal. Changes for Inclem. Weather/Em Cond

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 8, 2009
Introduced by:	Rep. Haire	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 636 would modify the school calendar law to allow local boards of education to extend the closing date for students by up to three days to June 13 to provide for makeup days due to inclement weather or emergency conditions. If additional makeup days are still needed, up to two protected teachers could be used.***

CURRENT LAW: G.S. 115C-84.2 directs local boards of education to adopt a school calendar consisting of 215 days, all of which must fall within the fiscal year. (The breakdown for the 215-day school calendar is on the back of this summary.) Except for year-round schools, the opening date of school for students may not be before August 25, and the closing date for students may not be after June 10. The statute provides for waivers by the State Board of Education from this requirement in certain circumstances related to emergency situations or educational purposes.

The statute also provides that a local board of education may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time (180 days and 1000 hours of instruction covering 9 calendar months).

Five of the 215 days are designated by a local board for use as teacher workdays. The local board must schedule one of these days at the beginning of the school year and one at the end of each academic quarter. These days must be protected to allow teachers to complete instructional and classroom administrative duties, and a local board is prohibited from imposing any additional tasks on these days.

BILL ANALYSIS: House Bill 636 would modify the school calendar law to allow local boards of education to extend the school closing date for students by up to three additional days to June 13 to provide for makeup days due to inclement weather or emergency conditions if the school calendar does not include sufficient weekdays to accommodate all of the needed makeup days. If additional days are still needed for makeup days for inclement weather or emergency conditions, a local board of education could use up to two protected teacher workdays.

EFFECTIVE DATE: The act would become effective when it becomes law and would apply beginning with the 2009-2010 school year.

BACKGROUND: Beginning in 1943, North Carolina statutes have required a 180 day public school year. Prior to 2004, local boards of education determined the opening and closing dates of the school year, with no dates specified in statute. S.L. 2004-180 amended the statute to establish August 25th as the earliest school start date and June 10th as the latest school closing date for students. This law also allows the State Board of Education to grant waivers upon a showing of good cause or educational purpose by the local school administrative unit.

Please see the back of this page for additional information on the school calendar.

**Dr. Shirley Iorio, Committee Analyst, significantly contributed to this summary.*

Public School Calendar

G.S. 115C-84.2 is the statute which established the parameters of the school calendar. Local boards of education must adopt a school calendar which meets the following criteria:

- Must be 215 days, all of which fall within the fiscal year.
- Must include a minimum of 180 days and 1000 hours of instruction covering at least 9 calendar months.
- Must include a plan for making up days and instructional hours missed due to inclement weather.
- Must include a minimum of 10 annual vacation leave days.
- Must include the same or an equivalent number of legal holidays occurring within the school calendar year as those designated by the State Personnel Commission for state employees.
- Must include five days designated for use as protected teacher workdays.

All other days must be scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purpose.

The total number of teacher workdays for teachers employed for a 10 month term may not exceed 195 days.

The calendar must include at least 42 consecutive days when teacher attendance is not required unless the school is a year-round school or the teacher is employed for an excess of 10 months.

School may not be held on Sundays.

Veteran's Day must be a holiday for all public school personnel and students.

Except for year-round schools, the opening date of school for students may not be before August 25, and the closing date for students may not be after June 10. The statute provides for waivers by the State Board of Education from this requirement in certain circumstances related to emergency situations or educational purposes.

Teacher Workdays in the School Calendar

The statute includes the following specifics related to teacher workdays.

The calendar must include 5 protected workdays for teachers to complete instructional and administrative duties. The LEA may not impose additional tasks on teachers on those days. One of the 5 days must be scheduled at the beginning of the school year, and one must be scheduled at the end of each academic quarter.

Other teacher workdays may be scheduled in the local board's discretion.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 636
Committee Substitute Favorable 4/16/09

Short Title: Sch Cal. Changes for Inclem. Weather/Em Cond. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SCHOOL CALENDAR LAW TO ALLOW LOCAL BOARDS OF EDUCATION TO EXTEND THE CLOSING DATE FOR STUDENTS BY THREE DAYS UNTIL JUNE 13 TO PROVIDE FOR MAKEUP DAYS DUE TO INCLEMENT WEATHER OR EMERGENCY CONDITIONS AND IF ADDITIONAL MAKEUP DAYS ARE STILL NEEDED, TO USE UP TO TWO PROTECTED TEACHER WORKDAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-84.2 is amended by adding a new subsection to read:

"(f) Notwithstanding subsection (d) of this section, if the school calendar does not include sufficient weekdays to accommodate makeup days due to school closings for inclement weather or emergency conditions, a local board of education may extend the closing date for students by up to three additional days to June 13. If additional days are still needed for makeup days due to school closings for inclement weather or emergency conditions, a local board of education may use up to two protected teacher workdays under subdivision (4) of subsection (a) of this section."

SECTION 2. G.S. 115C-84.2(a)(4) reads as rewritten:

"(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

...

(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule one of these days at the beginning of the school year and one at the end of each academic ~~quarter.~~quarter. Up to two of these days may be used for makeup days due to school closings for inclement weather or emergency conditions as provided in subsection (f) of this section."

SECTION 3. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1182 A BILL TO BE ENTITLED AN ACT AUTHORIZING CLERKS OF THE SUPERIOR COURTS OF THIS STATE TO DETERMINE WHETHER AN EASEMENT SHOULD BE RELOCATED IN A SPECIAL PROCEEDING.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1182
PROPOSED COMMITTEE SUBSTITUTE H1182-PCS10959-RN-26

Short Title: Relocation of Easements. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CLERKS OF THE SUPERIOR COURTS OF THIS STATE TO DETERMINE WHETHER AN EASEMENT SHOULD BE RELOCATED IN A SPECIAL PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new Article to read as follows:

"Article 4B.

"Relocation of Easements.

"**§ 136-71.17. Special proceeding for relocation of easements; petition; appeal.**

(a) The relocation of an easement shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. The special proceeding shall be commenced by the owner of the servient estate filing a petition with the clerk and serving a copy thereof on the owner of the dominant estate. A guardian ad litem shall be appointed for any person under a disability.

(b) The clerk shall issue an order authorizing the relocation of the easement only if there is a finding that the relocation can be accomplished without: (i) material and substantial inconvenience; (ii) material and substantial reduction in value; or (iii) substantial expense to connect the relocated easement to any existing improvements situated on the dominant estate that are necessary for the continued use of the easement by the owner of the dominant estate. The owner of the servient estate shall record in the office of the county register of deeds a copy of the clerk's order authorizing the relocation of the easement along with a plat showing the relocated easement. The order and plat shall be indexed under the names of the owner of the servient estate and the owner of the dominant estate.

(c) The owner of the servient estate shall bear the cost of relocating the easement. The costs in the special proceeding, including the fee and other cost of a survey as provided in G.S. 1-408.1, shall be taxed against the owner of the servient estate. However, if the clerk makes a finding that the owner of the dominant estate has unreasonably refused to consent to the relocation of the easement, all or a portion of the costs in the special proceeding may be taxed against the owner of the dominant estate.

(d) From any final order or judgment in the special proceeding, any interested party may appeal to the superior court for a jury trial de novo on the issue of the relocation of the easement.

(e) This Article does not apply to public utilities as defined in G.S. 62-3(23)a.1."

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

HOUSE BILL 1182:
Relocation of Easements

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	May 11, 2009
Introduced by:	Reps. Haire, Spear, Randleman	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H1182-CSRN-26		Committee Co-Counsel

SUMMARY: House Bill 1182 authorizes clerks of superior courts to determine whether an easement should be relocated in a special proceeding. The Proposed Committee Substitute (PCS) makes clarifying changes and specifies that these provisions do not apply to public utilities that produce light, heat, or power to the public.

CURRENT LAW: Chapter 136 of the General Statutes deals with roads and highways. There are various articles dealing with the organization of the Department of Transportation and its powers. An easement is a right to make some use of land owned by another person. The terms "dominant tact" and "servient tract" are used in discussing easements. The dominant tract is the tract benefited by the easement, and the servient tract is the tract burdened by the easement.

BILL ANALYSIS: The PCS for House Bill 1182 would create a new Article in Chapter 136 that provides for all of the following:

- **Special Proceeding for relocation of an easement.**-The relocation of an easement must be determined by a special proceeding in the county where the property affected is situated. The special proceeding must be commenced when the owner of the servient estate files a petition with the clerk and serves a copy on the owner of the dominant estate.
    - A guardian ad litem will be appointed for any person under a disability.
- **Standard for relocating an easement-** The clerk will authorize the relocation of the easement only if there is a finding that the relocation can be accomplished without (1) material and substantial inconvenience, (2) material and substantial reduction in value, or (3) substantial expense to connect the relocated easement to any existing improvements situated on the dominant estate that are necessary for the continued use of the easement by the dominant estate owner.

Recording the order and plat.-The owner of the servient estate must record in the office of the county register of deeds: a copy of the clerk's order authorizing relocation and a plat showing the relocated easement.

- The order and plat are indexed under the names of both the owner of the servient estate and the owner of the dominant estate.

- **Costs –**
    - The following costs are to be paid by the **owner of the servient estate**:
        - Costs of relocating the easement.
        - Costs in the special proceeding, including the fee and other cost of a survey.

- If the clerk makes a finding that the **owner of the dominant estate** has unreasonably refused to consent to the relocation of the easement, all or a portion of the costs in the special proceeding may be **taxed against the owner of the dominant estate.**

- **Right to appeal.**-From any final order, any interested party may appeal to the superior court for a jury trial de novo on the issue of relocating the easement.
- **Exemption for Public Utilities-** The new Article does not apply to public utilities that produce light, heat, or power to the public.

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

H1182-SMRN-63(CSRN-26) v2

H 1

HOUSE BILL 1182

Short Title:	Relocation of Easements.	(Public)
Sponsors:	Representatives Haire, Spear, and Randleman (Primary Sponsors).	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CLERKS OF THE SUPERIOR COURTS OF THIS STATE TO DETERMINE WHETHER AN EASEMENT SHOULD BE RELOCATED IN A SPECIAL PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new article to read as follows:

"Article 4B.

"Relocation of Easements.

"**§ 136-71.17. Special proceeding for relocation of easements; petition; appeal.**

(a) The relocation of an easement shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. The special proceeding shall be commenced by a petition filed with the clerk and the service of a copy thereof on persons who have an ownership interest in the property. A guardian ad litem shall be appointed for any person under a disability.

(b) The clerk shall issue an order authorizing the relocation of the easement only if there is a finding that the relocation can be accomplished without material and substantial inconvenience or material and substantial reduction in value to the benefited landowner. The order shall require the owner of the servient estate to record in the office of the county register of deeds a plat showing the relocated easement.

(c) The owner of the servient estate shall bear the cost of relocating the easement. In the discretion of the clerk of court, costs in the special proceeding shall be taxed against either party or apportioned among the parties.

(d) From any final order or judgment in the special proceeding, any interested party may appeal to the superior court for a jury trial de novo on the issue of the relocation of the easement."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 829 A BILL TO BE ENTITLED AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 829:
Development Tier Exception Modification

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	May 11, 2009
Introduced by:	Reps. Hill, Stiller	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 829[1] would reduce the percentage of a two-county industrial park that must be located in the lower tier county to qualify the park for the lower development tier designation.

CURRENT LAW: The Department of Commerce annually ranks the State's 100 counties based on economic well-being and assigns a tier designation to each county. A development tier designation is effective only for the calendar year following the designation. The 40 most distressed counties are designated as Tier 1, the next 40 are designated Tier 2, and the remaining 20 counties are designated Tier 3. This tier system is incorporated into various State incentive programs to encourage economic activity in the less prosperous areas of the State.

The ranking system is based upon a county's development factor[2] and statutorily mandated adjustments. One of the statutorily mandated adjustments[3] is for a two-county industrial park. An eligible two-county industrial park has the lower development tier designation of the two counties in which it is located. An eligible two-county industrial park is one that meets all of the following conditions:

- It is located in two contiguous counties.
- *At least 1/3 of the park is located in the county with the lower tier designation.*
- 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.
- 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.

BILL ANALYSIS: House Bill 829 would amend the second condition by requiring that 1/5 of the property, rather than 1/3 of the property, be located in the lower tier county.

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

BACKGROUND: Columbus and Brunswick Counties are building a two-county industrial park and desire to take advantage of the lower tier designation of Columbus County. Columbus County is a development tier 1 county and Brunswick County is a development tier 3 county. The two counties are planning to develop the "International Logistics Park of North Carolina". This industrial park would be the first at-port distribution center in North Carolina. The 1000-acre park will be located along Highway 74 (future I-74) and within 16 miles of the Port of Wilmington. The park would house a series of large distribution centers from which goods coming into the State Port at Wilmington could be distributed to

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[1] As introduced, this bill was identical to S898, as introduced by Sen. Soles, which is currently in Senate Finance.

[2] A county's development factor is the sum of the county's rank in the following areas: average rate of unemployment for the most recent 12 month period, median household income for the most recent 12 month period, percentage growth in population for the most recent 36 months, and adjusted assessed property value per capita for the most recent taxable year.

[3] Other statutorily mandated adjustments include those for small counties, development tier 1 areas, and multijurisdictional industrial parks.

retail outlets or regional distribution centers. The ports located in Charleston, SC, Norfolk, VA, and Savannah, GA all have at-port distribution centers located near them.

The International Logistics Park will straddle the Brunswick and Columbus County line with approximately 200 acres located in Columbus County and the remaining 800 acres or so located in Brunswick County. The counties anticipate that the park will create 4000 new jobs for the area and incur at least $300 million in private investments.

The lower tier designation would allow businesses locating in the International Logistics Park to qualify for the larger tax credits available under Article 3J for tier 1 counties and other incentives available to tier 1 counties:

- Credit for creating jobs. – The job threshold and the credit amount per job is determined by the tier designation of the county in which the jobs are created. For a tier 1 county, the minimum number of jobs that must be created is five and the credit amount per job is $12,500; for a tier 2 county, the minimum number of jobs is 10 and the credit amount per job is $5,000; for a tier 3 county, the minimum is 15 and the credit amount is $500.
- Credit for investing in business property. – The credit percentage and threshold are based on the tier designation of the county where the property is placed in service. For a tier 1 county, there is no threshold and the credit percentage is 7% of the cost of capitalized tangible personal property; for a tier 2 county, the threshold is $1 million and the credit percentage is 5%; for a tier 3 county, the threshold is $2 million and the credit percentage is 3.5%.
- Credit for investing in real property. – This credit is only available for an eligible establishment located in a Tier 1 county. To be eligible, the taxpayer must invest at least $100 million in real property within a 3-year period and create at least 200 new jobs within 2 years.
- Credit for research and development. – The credit for expenses for research performed in a tier 1 county is 3.25% of the expenses, regardless of the amount of expenses incurred. For research performed in a tier 2 or tier 3 county, the percentage varies depending upon the amount of expense occurred.
- Job development investment grant. – This discretionary incentive program provides a limited number of cash grants directly to new and expanding businesses. The grants are based on job creation and investment commitment. The minimum number of jobs that must be created to qualify for a grant varies depending upon the development tier designation of the county where the jobs are created: the minimum number of jobs that must be created in a tier 1 county is 10 and for all other counties the minimum number of jobs that must be created is 20.
- Industrial development fund. – This fund provides grants and loans for infrastructure development in the 66 most distressed counties. There is no local match requirement in the 26 most distressed counties.

H829-SMRQ-78(e1) v2

**Cindy Avrette, Counsel to Senate Finance, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 829*

Short Title:	Development Tier Exception Modification.	(Public)
Sponsors:	Representatives Hill and Stiller (Primary Sponsors).	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.08(g) reads as rewritten:

"(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~~one-fifth 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."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1084 A BILL TO BE ENTITLED AN ACT TO AMEND THE LIQUEFIED PETROLEUM GAS LAW TO CREATE CLASSES OF DEALERS FOR THE PURPOSE OF INSURANCE REQUIREMENTS, TO CLARIFY THE AUTHORITY TO CONDUCT INSPECTIONS, TO INCREASE CIVIL PENALTIES, AND TO MAKE TECHNICAL CHANGES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 1084:
Revise LPG Dealer Requirements

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 11, 2009
Introduced by:	Rep. Hill	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

SUMMARY: House Bill 1084 increases the insurance requirements for liquefied petroleum gas dealers who transport LP gas, requires inspection of LP gas containers and installations by the Agriculture Commissioner, and increases civil penalties for dealer violations.

CURRENT LAW: Article 5 of Chapter 119 of the General Statutes sets minimum safety standards for the design, construction, location, installation, and operation of equipment used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum ("LP") gas. Current law requires all LP gas dealers to register with the Commissioner of Agriculture annually and to maintain comprehensive general liability insurance in the amount of $100,000 and, "when applicable," comprehensive automobile liability insurance in the amount of $100,000. Dealers who sell but do not fill LP gas containers having less than 50 pounds water capacity are exempt from these requirements. The Commissioner is not required to inspect LP gas containers or installations. Dealers who violate Article 5 are subject to a civil penalty of $100 for the first violation, $300 for a second violation, and $500 for a third or subsequent violation.

BILL ANALYSIS: House Bill 1084 does all of the following:

Section 1 would require all dealers who transport LP gas (defined as "Class A dealers") to maintain at least $1 million in both general liability insurance and motor vehicle insurance, regardless of the size of the containers they retail. Dealers selling LP gas in containers of at least 50 gallons water capacity, but not filling or transporting them, would be required to register and maintain $100,000 in general liability insurance. Dealers would be required to register with the Commissioner of Agriculture once rather than annually. Verification of the required insurance coverage would be a prerequisite to the Commissioner's issuance or renewal of a dealer's registration.

Section 2 would require the Commissioner to conduct inspections of LP gas containers and facilities.

Section 3 would increase the civil penalties to $300 for the first violation, $500 for a second violation, and $1,000 for a third or subsequent violation, and would eliminate the current requirement that the Commissioner give the violator notice of the violation and 45 days to correct or cease it before assessing a civil penalty.

Section 4 would correct a misspelling of the word "liquefied."

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1084-SMRN-62(e2) v2

Bill Patterson contributed substantially to the drafting of this summary.

H 2

HOUSE BILL 1084
Committee Substitute Favorable 5/5/09

Short Title: Revise LPG Dealer Requirements. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LIQUEFIED PETROLEUM GAS LAW TO CREATE CLASSES OF DEALERS FOR THE PURPOSE OF INSURANCE REQUIREMENTS, TO CLARIFY THE AUTHORITY TO CONDUCT INSPECTIONS, TO INCREASE CIVIL PENALTIES, AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 119-56 reads as rewritten:

"**§ 119-56. Registration of dealers; liability insurance or substitute required.**

A person shall not hold himself out or commence operation as a dealer without first having registered as ~~herein provided~~ provided in this section. A dealer shall ~~annually on or before January 1 of each year~~ register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business ~~[of]~~of such dealer, and such other pertinent information as the Commissioner may deem necessary. Verification of the insurance coverage required by this section or of proof of alternative means of financial responsibility permitted by this section shall be submitted to the Commissioner as a condition of the issuance of any registration or renewal of such registration.

There shall be two classes of dealers:

(1) A Class A dealer is one who engages in the transportation of liquefied petroleum gas.

(2) A Class B dealer is one who does not engage in the transportation of liquefied petroleum gas.

~~A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars ($100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars ($100,000) combined single limits.~~ A Class A dealer shall obtain and maintain general liability insurance, including product liability, of one million dollars ($1,000,000) and motor vehicle liability insurance of one million dollars ($1,000,000) combined single limit. A Class B dealer shall obtain and maintain general liability insurance, including product liability, of one hundred thousand dollars ($100,000). Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. The Commissioner may from time to time request in writing that a dealer provide within 10 days of such request verification of said insurance coverage or proof of alternative means of financial responsibility. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling or transportation of such containers."

SECTION 2. G.S. 119-57 reads as rewritten:

"**§ 119-57. Administration of Article; rules and regulations given force and effect of law.**

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to conduct inspections of liquefied petroleum gas containers and installations; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof."

SECTION 3. G.S. 119-59 reads as rewritten:

"**§ 119-59. Sanctions for violations.**

(a) Criminal. – A dealer who violates a provision of this Article or a rule adopted under it is guilty of a Class 1 misdemeanor.

(b) Injunction. – The Commissioner or an agent of the Commissioner may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or a rule adopted under it.

(c) Civil Penalty. – The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed ~~one hundred dollars ($100.00)~~three hundred dollars ($300.00) for the first violation, ~~three hundred dollars ($300.00)~~five hundred dollars ($500.00) for a second violation, and ~~five hundred dollars ($500.00)~~one thousand dollars ($1,000) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation. ~~The Commissioner may not assess a civil penalty against a person until the Commissioner has notified the person of the alleged violation and has given the person at least 45 days to correct or cease the alleged violation. A notice may be served by any means authorized by G.S. 1A-1, Rule 4.~~ The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Registration. – The Commissioner may deny, suspend, or revoke the registration of a dealer who violates a provision of this Article or a rule adopted under it."

SECTION 4. G.S. 119-61 reads as rewritten:

"**§ 119-61. Replacement data plates for ~~liquified~~ liquefied petroleum gas tanks.**

A ~~liquified~~ liquefied petroleum gas tank of 120 gallons or more that is subject to the American Society of Mechanical Engineers (ASME) Code must have a data plate indicating that it was built in accordance with that Code. The Commissioner may issue a data plate to replace a rusting or partially detached data plate on a ~~liquified~~ liquefied petroleum gas tank. The Commissioner shall charge a person to whom a replacement data plate is issued a fee of twenty dollars ($20.00) for the plate. Fees collected under this section shall be credited to the Department of Agriculture and Consumer Services and applied to the cost of issuing replacement data plates."

SECTION 5. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1169
PROPOSED COMMITTEE SUBSTITUTE H1169-CSRQ-25 [v.2]

5/5/2009 4:44:17 PM

Short Title: Give 90-Day Layoff Notice/WARN. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT EMPLOYERS GIVE AN ADDITIONAL THIRTY DAYS NOTICE TO EMPLOYEES IN NORTH CAROLINA IN ADVANCE OF LAYOFFS AND PLANT CLOSINGS SUBJECT TO THE FEDERAL WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 2B.

"Worker Adjustment and Retraining Notification.

"**§ 95-25.30. Purpose.**

(a) The General Assembly finds that the burden on employers and employees of this State in difficult economic times increasingly becomes too great with business closures and layoffs becoming inevitable. Further, when there is advance notice of the loss of employment affecting our communities, the advance notice assists greatly in providing effectively the State and local resources that must be available to our citizens for a smooth transition.

(b) The General Assembly declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible that working men and women in this State have the benefit of the earliest meaningful notice of business closures and layoffs to provide sufficient time to prepare for the transition between the jobs they hold and new jobs.

"**§ 95-25.31 Additional advance notice of mass layoff or plant closure required.**

(a) Any employer in this State subject to the provisions of the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. ("WARN Act"), as amended, shall provide to affected employees in this State, prior to the sixty day notification required under the WARN Act, an additional thirty days advance notice of plant closures or mass layoffs.

(b) Nothing in this Article shall be construed to expand or limit any existing rights, claims, or defenses of employers or employees under the WARN Act.

"**§ 92-25.32. Remedies; enforcement.**

(a) The Commissioner of Labor or the Commissioner's authorized representative shall administer this Article. The Commissioner of Labor may enter into a reciprocal agreement with the United States Department of Labor pertaining to the administration and enforcement of this Article.

(b) The Commissioner of Labor or the Commissioner's authorized representative shall enforce this Article by seeking injunctive relief in the General Court of Justice.

(c) The violation of this Article is not a criminal offense."

SECTION 2. The Department of Labor shall adopt emergency rules in accordance with G.S. 150B-21.1A to provide for the immediate implementation of this act.

SECTION 3. The following State agencies, departments, and institutions having workforce development components, public assistance services, or educational programs, shall work with the Commissioner of Labor cooperatively to enhance the State's response to plant closings and mass layoffs under this act:

(1) Department of Administration.
(2) Department of Commerce.
(3) North Carolina Community College System.
(4) Employment Security Commission.
(5) Department of Health and Human Services.
(6) Department of Public Instruction.
(7) The University of North Carolina.

By April 1, 2010, the Commissioner of Labor shall report to the General Assembly on the enhancement of the State's response to plant closings and mass layoffs.

SECTION 4. This act is effective when it becomes law and applies to plant closings and mass layoffs on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1169 - CSRQ - 25 [v.2] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Charles Warren
Sen.)

moves to amend the bill on page 1, lines 30-32

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(a) The Secretary of Commerce or the Secretary's authorized representative shall administer this Article. The Secretary of Commerce may enter into a reciprocal agreement with"; and on

p. 2, line 1 by rewriting the line to read:

(b) The Secretary of Commerce or the Secretary's authorized representative shall"; and on

pg. 2 line 5 by substituting "Commerce" for "Labor"; and on p. 2, line 8 by deleting "Commissioner of Labor" & substituting "Secretary of Commerce"; and on p. 2, line 11 by deleting "Department of Commerce." & rewriting the subdivision; and on p. 2, line 17 by deleting "Commissioner of Labor" and substituting "Secretary of Commerce".

SIGNED Edith D. Warren

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1169:
Enact WARN-NC/Give 90-Day Layoff Notice

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	May 6, 2009
Introduced by:	Reps. Glazier, Lucas, Ross, Faison	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	PCS to First Edition H1169-CSRQ-25		

SUMMARY: ***House Bill 1169 would enact the Worker Adjustment and Retraining Notification Act of North Carolina (WARN-NC) to provide that affected workers receive 90 days advance notice of mass layoffs and plant closings.***

The Proposed Committee Substitute (PCS) rewrites the bill to do the following:

- ***Require employers subject to the federal Worker Adjustment and Retraining Notification Act (WARN Act) to give affected employees in North Carolina 30 days advance notice of plant closures or mass layoffs. This would be prior to the 60 day notice required in the WARN Act.***
- ***Direct the Commissioner of Labor to administer and enforce the new statute.***

BILL ANALYSIS:

Section 1 requires any employer in the State that is subject to the federal WARN Act provisions to provide affected employees in this State an additional 30 days advance notice of plant closures or mass layoffs prior to the 60 day notification required under the WARN Act.

The Commissioner of Labor or the Commissioner's representative would administer the provisions and the Commissioner may enter into a reciprocal agreement with the federal Department of Labor regarding administration and enforcement.

Enforcement of the provisions would be through seeking injunctive relief and any violations would not be criminal offenses.

Section 2 requires the Department of Labor to adopt emergency rules to provide for the immediate implementation of the bill.

Section 3 lists the State agencies, departments, and institutions that must work with the Commissioner of Labor to enhance the State's response to plant closings and mass layoffs. The Commissioner of Labor must report to the General Assembly by April 1, 2010 on the enhancement of the State's response to plant closings and mass layoffs.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to plant closing and mass layoffs on or after that date.

BACKGROUND: Please see the back of the page for information from the US Department of Labor regarding the federal WARN Act.

H1169-SMRQ-69(CSRQ-25) v2

Worker Adjustment and Retraining Notification Act (WARN)
(29 USC §2101 et seq. ; 20 CFR Part 639)[1]

Who is Covered

The Worker Adjustment and Retraining Notification Act (WARN) generally covers employers with 100 or more employees, not counting those who have worked less than six months in the last 12 months and those who work an average of less than 20 hours a week. Regular federal, state, and local government entities that provide public services are not covered. Employees entitled to notice under WARN include managers and supervisors as well as hourly and salaried workers.

Basic Provisions/Requirements

WARN protects workers, their families, and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice gives workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain other jobs and, if necessary, to enter skill training or retraining that will allow these workers to compete successfully in the job market. WARN also provides for notice to state dislocated worker units so that they can promptly offer dislocated worker assistance.

A covered plant closing occurs when a facility or operating unit is shut down for more than six months, or when 50 or more employees lose their jobs during any 30-day period at a single site of employment. A covered mass layoff occurs when a layoff of six months or longer affects either 500 or more workers or at least 33 percent of the employer's workforce when the layoff affects between 50 and 499 workers. The number of affected workers is the total number laid off during a 30-day (or in some cases 90-day) period.

WARN does not apply to closure of temporary facilities, or the completion of an activity when the workers were hired only for the duration of that activity. WARN also provides for less than 60 days notice when the layoffs resulted from closure of a faltering company, unforeseeable business circumstances, or a natural disaster.

Employee Rights

Workers or their representatives, and units of local government may bring individual or class action suits. U.S. district courts enforce WARN requirements. The Court may allow reasonable attorney's fees as part of any final judgment.

Penalties/Sanctions

An employer who violates the WARN provisions is liable to each employee for an amount equal to back pay and benefits for the period of the violation, up to 60 days. This may be reduced by the period of any notice that was given, and any voluntary payments that the employer made to the employee.

An employer who fails to provide the required notice to the unit of local government is subject to a civil penalty not to exceed $500 for each day of violation. The employer may avoid this penalty by satisfying the liability to each employee within three weeks after the closing or layoff.

Relation to State, Local, and Other Federal Laws

WARN does not preempt any other federal, state, or local law, or any employer/employee agreement that requires other notification or benefit. Rather, the rights provided by WARN supplement those provided by other federal, state, or local laws.

[1] http://www.dol.gov/compliance/guide/layoffs.htm

HOUSE BILL 1169

Short Title:	Enact WARN-NC/Give 90-Day Layoff Notice.	(Public)
Sponsors:	Representatives Glazier, Lucas, Ross, Faison (Primary Sponsors); Harrison, Jones, Mackey, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT ENACTING THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT OF NORTH CAROLINA TO PROVIDE THAT NORTH CAROLINA WORKERS RECEIVE NINETY DAYS' ADVANCE NOTICE OF MASS LAYOFFS AND PLANT CLOSINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Worker Adjustment and Retraining Notification.

"**§ 95-75. Short title and legislative purpose.**

(a) This Article shall be known as the "Worker Adjustment and Retraining Notification Act of North Carolina" and may be abbreviated as "WARN-NC."

(b) The General Assembly finds that the burden on employers and employees of this State in difficult economic times increasingly becomes too great with business closures and layoffs becoming inevitable. Further, when there is advance notice of the loss of employment affecting our communities, the advance notice assists greatly in providing effectively the State and local resources that must be available to our citizens for a smooth transition.

(c) The General Assembly declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible that working men and women in this State have the benefit of the earliest meaningful notice of business closures and layoffs to provide sufficient time to prepare for the transition between the jobs they hold and new jobs.

"**§ 95-76. Definitions.**

(a) The following definitions apply in this Article:

(1) Affected employees. – Employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. They include individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The category of affected employees includes managerial and supervisory employees but does not include business partners. Consultant or contract employees who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed, are not "affected employees" of the business to which they are assigned.

(2) Bumping rights. – Those rights of an employee to displace another employee due to a layoff or other employment action as (i) defined in a collective bargaining agreement or other binding agreement, (ii) provided by employer policy, or (iii) created through a seniority system.

(3) Constructive discharge. – When a worker's resignation or retirement may be found to be involuntary because the employer has created a hostile or intolerable work environment or has applied other forms of pressure or coercion that forced the employee to quit or resign.

(4) Employer. – Any business enterprise that employs 100 or more full-time workers or 100 or more full- and part-time workers who work at least a combined 4,000 hours a week. Business enterprises include private for-profit and not-for-profit entities as well as governmental or quasi-governmental organizations that engage in business and are separately organized from the regular government.

(5) Employment loss. –

a. An employment termination, other than a discharge for cause, voluntary departure, or retirement; or

b. A layoff exceeding six months; or

c. A reduction in hours of work of individual employees of more than fifty percent (50%) during each month of any six-month period.

(6) Facility. – A separate building or buildings.

(7) Operating unit. – An organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site. Whether a specific unit within an employer's organization is an operating unit depends on such factors as collective bargaining agreements, the employer's organizational structure, and industry understandings about what constitutes separate work functions.

(8) Mass layoff. – A reduction in force that:

a. Does not result from a plant closing; and

b. Results in an employment loss at the single site of employment during any 30-day period for:

1. At least 50-499 employees if they represent at least thirty-three percent (33%) of the total active workforce, excluding any part-time employees; or

2. 500 or more employees (excluding any part-time employees). In this case, the thirty-three percent (33%) rule does not apply.

(9) Part-time worker. – An employee who averages less than 20 hours per week or has been employed for fewer than six of the last 12 months before the notice is due.

(10) Plant closing. – The permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding part-time employees. All of the employment losses do not have to occur within the unit that is shut down.

(11) Single site of employment. – Refers to any of the following:

a. A single location or a group of contiguous locations. Groups of structures that form a campus or industrial park or separate facilities across the street from one another may be considered a single site of employment. Also, several single sites of employment may exist

within a single building if separate employers conduct activities within the building.

b. Separate buildings or areas within reasonable geographic proximity and share staff and equipment.

c. For workers who primarily travel, a home base from which work is assigned or a home base to which workers report when (i) a worker's primary duties require travel from point to point, (ii) the worker's duties are outstationed, and (iii) the worker's primary duties are outside any of the employer's regular employment sites.

(12) State rapid response dislocated worker unit. – A unit that is designated by the Governor under the federal Workforce Investment Act.

(b) The definition of "employment loss" does not include a situation where a worker is reassigned or transferred to employer-sponsored programs, such as retaining or job search activities, and the reassignment does not constitute an involuntary termination or a constructive discharge, and the employee continues to be paid.

"**§ 95-77. WARN-NC notices required; State rapid response.**

(a) An employer must provide written notice at least 90 calendar days in advance of a plant closing or a mass layoff in order to assure that assistance can be provided to affected employees, their families, and the appropriate communities through the State's program of rapid assistance for dislocated workers and to allow affected employees transition time to seek alternative jobs or enter skills programs.

(b) A WARN-NC notice is required when an employer is laying off at least 50 people in a single site of employment or employs 100 or more workers who work a combined 4,000 hours per workweek, and is a private for-profit business, a private nonprofit organization, or a quasi-public entity separately organized from regular government.

(c) Upon receipt of a WARN-NC notice, the State's rapid response dislocated worker unit, the local departments of social services, the local offices of the Employment Security Commission, the community colleges, and other training and worker-related public educational resources shall be mobilized immediately to assist affected employees.

"**§ 95-78. Penalties; no effect on other rights.**

(a) Any employer who violates this Article is liable to each affected employee for an amount equal to back pay and benefits for the period of the violation, up to 90 days.

(b) An employer's WARN-NC liability may be reduced by any (i) wages the employer pays over the notice period and (ii) voluntary and unconditional payment not reduced by a legal obligation.

(c) Nothing in this Article shall be deemed to diminish the rights or remedies of any affected employee under any collective bargaining agreement, employment contract, other statutory rights or remedies, or at common law.

"**§ 95-79. Enforcement.**

(a) The Commissioner shall enforce this Article.

(b) The Attorney General shall represent the Department of Labor or designate some member of his or her staff to represent them in all actions or proceedings in connection with this Article.

"**§ 95-80. Civil action.**

Within 90 days of an employer's failure to provide an affected employee with the WARN-NC notice required by this Article, the affected employee may bring against the employer a civil action in the superior court of the county in which the affected employee is employed to obtain monetary damages allowed under G.S. 95-78.

"**§ 95-81. Record keeping; reporting; statistics.**

(a) Each employer shall make available to the Commissioner copies of the same records and reports regarding the employer's activities relating to this Article as are required to be

made, kept, or preserved by the federal Worker Adjustment and Retraining Notification Act (P.L. 100-379) and regulations made pursuant thereto.

(b) Each employer shall maintain and make available to the Commissioner any records regarding the employer's activities relating to this Article which the Commissioner may by rule require as necessary and appropriate for the enforcement of this Article.

(c) The Commissioner shall adopt rules requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their rights under this Article.

(d) Any information obtained by the Commissioner shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible."

SECTION 3. The Department of Labor shall adopt emergency rules in accordance with G.S. 150B-21.1A to provide for the immediate implementation of this act.

SECTION 4. The following State agencies, departments, and institutions having workforce development components, public assistance services, or educational programs, shall work with the Commissioner of Labor cooperatively to enhance the State's response to plant closings and mass layoffs under this act:

(1) Department of Administration.
(2) Department of Commerce.
(3) North Carolina Community College System.
(4) Employment Security Commission.
(5) Department of Health and Human Services.
(6) Department of Public Instruction.
(7) The University of North Carolina.

By April 1, 2010, the Commissioner of Labor shall report to the General Assembly on the enhancement of the State's response to plant closings and mass layoffs.

SECTION 5. This act is effective when it becomes law and applies to plant closings and mass layoffs on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1265 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT PRIVATE PERSONNEL SERVICES, JOB LISTING SERVICES, AND INDIVIDUALS PROVIDE A NOTICE TO POTENTIAL CUSTOMERS CONCERNING IDENTITY THEFT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1265:
Identity Theft Warning/Employment Assistance

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	May 9, 2009
Introduced by:	Reps. Hall, Mackey, E. Floyd, Wainwright	**Prepared by:**	Karen Cochrane-Brown Committee Co-Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1265 would require that private personnel services, job listing services, and individuals offering job placement provide a notice to potential customers concerning identity theft.

CURRENT LAW:

Under current law, private personnel services and job listing services are regulated by the Commissioner of Labor. Both types of businesses must be licensed by the Commissioner and must provide written contracts to their customers that include all statutory requirements.

BILL ANALYSIS:

House Bill 1265 amends the laws relating to contracts offered by private personnel services and job listing services to require that the contracts contain specific information about identity theft.

The contracts must include a statement, in type size no smaller than nine-point directly above the place for the applicant's signature, cautioning the applicant about the danger of disclosing sensitive personal information. The statement must also include information about North Carolina laws that currently provide protections for sensitive personal information, including the laws making financial identity fraud and trafficking in stolen identities a felony and specific provisions of the Identity Theft Protection Act.

Section 3 of the bill amends the Identity Theft Protection Act to require that any person who assists or offers to assist another person find employment in exchange for compensation must also provide the same notice required of private personnel services and job listing services. The bill makes violation of this provision a Class 3 misdemeanor. Violations of other provisions of the Identity Theft Protection Act are deemed unfair and deceptive trade practices.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1265-SMRO-84(e1) v2

HOUSE BILL 1265

Short Title:	Identity Theft Warning/Employment Assistance.	(Public)
Sponsors:	Representatives Hall, Mackey, E. Floyd, Wainwright (Primary Sponsors); Adams, M. Alexander, Barnhart, Blust, Bordsen, Burris-Floyd, Dickson, Dockham, Farmer-Butterfield, Fisher, Goforth, Hughes, Jackson, Love, Lucas, Luebke, McLawhorn, Neumann, Setzer, Stewart, Stiller, Tolson, Tucker, E. Warren, Wilkins, Williams, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT PRIVATE PERSONNEL SERVICES, JOB LISTING SERVICES, AND INDIVIDUALS PROVIDE A NOTICE TO POTENTIAL CUSTOMERS CONCERNING IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-47.4 is amended by adding a new subsection to read:

"(i) A private personnel service shall include on each contract, in a type size no smaller than nine point, directly above the place for the applicant's signature and any other statements required to be directly above the applicant's signature, a statement that reads as follows:

'Protect Yourself From Identity Theft.

Be careful about what sensitive personal information you provide to a private personnel service. Sensitive personal information can be used to steal your identity and so it is a good idea to limit the amount and type of sensitive personal information you provide to a private personnel service to the bare minimum necessary to receive the services for which you are contracting.

North Carolina law currently provides certain protections for your sensitive personal information, including the following:

(1) Article 19C of Chapter 14 of the General Statutes makes it a felony for a person to obtain, possess, or use identifying information about you to fraudulently represent that that person is you for the purpose of making financial or credit transactions in your name, to obtain anything of value, or to avoid legal consequences.

(2) Article 19C of Chapter 14 of the General Statutes also prohibits the sale, purchase, or transfer of identifying information for the purpose of committing, or assisting in the commission of, any of the acts described in subdivision (1).

(3) G.S. 75-62 limits the ways in which businesses can solicit from you and use your Social Security Number.

(4) G.S. 75-63 allows you to place a security freeze on your credit report, which prevents credit reporting agencies from releasing your credit report to third

parties. This is designed to prevent credits, loans, and services, from being approved in your name without your consent.

(5) G.S. 75-64 requires that businesses that maintain personal information about residents of this State take reasonable steps to protect against unauthorized access to that information after its disposal.

(6) G.S. 75-65 requires that businesses notify you if there has been a security breach with respect to your personal information.

(7) G.S. 75-66 prohibits the disclosure of personal information by a person who knows that you have previously objected to such a disclosure.

Despite the existence of these protections, your best defense against having your identity stolen is to be careful about how you store and disseminate sensitive personal information.'"

SECTION 2. G.S. 95-47.25 reads as rewritten:

"**§ 95-47.25. Contracts; contents; approval.**

(a) A contract between a job listing service and an applicant shall be in writing, labeled as a contract, physically separate from any application form and made in duplicate, and shall include:

(1) A clear explanation of the services provided and the amount of the fee;

(2) In a type size no smaller than nine point, a statement that reads "I understand that _____ (name of job listing service) does not guarantee that I will obtain employment through its services. I understand that _____ (name of job listing service) does not refund fees for any reason," unless the job listing service agrees in the contract to refund to the applicant any fee the applicant paid to the job listing service if within three months of paying such a fee the applicant has not accepted an employment position listed in a publication of the job listing service;

(3) A statement that the job listing service is not a private personnel service or employment agency, that no additional fee will be charged to the applicant upon acceptance of employment and that the job listing service will not set up interviews or otherwise arrange direct contacts between an employer and the applicant; and

(4) A statement that the job listing service is licensed and regulated by the Commissioner and the address at which a copy of regulations governing job listing services may be obtained.

(b) A copy of each contract form to be used with applicants shall be filed with the Commissioner. Until the job listing service receives written notification from the Commissioner that the form conforms to the requirements of this Article and regulations adopted hereunder, it shall not be used with applicants. A job listing service shall not accept a fee from any applicant before the applicant has read and received a copy of the contract.

(c) A job listing service shall include on each contract, in a type size no smaller than nine point, directly above the place for the applicant's signature and any other statements required to be directly above the applicant's signature, a statement that reads as follows:

'Protect Yourself From Identity Theft.

Be careful about what sensitive personal information you provide to a job listing service. Sensitive personal information can be used to steal your identity and so it is a good idea to limit the amount and type of sensitive personal information you provide to a job listing service to the bare minimum necessary to receive the services for which you are contracting.

North Carolina law currently provides certain protections for your sensitive personal information, including the following:

(1) Article 19C of Chapter 14 of the General Statutes makes it a felony for a person to obtain, possess, or use identifying information about you to fraudulently represent that that person is you for the purpose of making financial or credit transactions in your name, to obtain anything of value, or to avoid legal consequences.

(2) Article 19C of Chapter 14 of the General Statutes also prohibits the sale, purchase, or transfer of identifying information for the purpose of committing, or assisting in the commission of, any of the acts described in subdivision (1).

(3) G.S. 75-62 limits the ways in which businesses can solicit from you and use your Social Security Number.

(4) G.S. 75-63 allows you to place a security freeze on your credit report, which prevents credit reporting agencies from releasing your credit report to third parties. This is designed to prevent credits, loans, and services, from being approved in your name without your consent.

(5) G.S. 75-64 requires that businesses that maintain personal information about residents of this State take reasonable steps to protect against unauthorized access to that information after its disposal.

(6) G.S. 75-65 requires that businesses notify you if there has been a security breach with respect to your personal information.

(7) G.S. 75-66 prohibits the disclosure of personal information by a person who knows that you have previously objected to such a disclosure.

Despite the existence of these protections, your best defense against having your identity stolen is to be careful about how you store and disseminate sensitive personal information.'"

SECTION 3. Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-67. Identity theft warning required prior to the provision of job placement assistance.**

(a) A person shall not, for consideration, assist or offer to assist another in finding employment unless the person providing or offering to provide the assistance first provides the other with the following notice, in a type size no smaller than nine point:

'**Protect Yourself From Identity Theft.**

Be careful about what sensitive personal information you provide to a person you are paying to help you find employment. Sensitive personal information can be used to steal your identity and so it is a good idea to limit the amount and type of sensitive personal information you provide to such a person to the bare minimum necessary to receive the services you desire.

North Carolina law currently provides certain protections for your sensitive personal information, including the following:

(1) Article 19C of Chapter 14 of the General Statutes makes it a felony for a person to obtain, possess, or use identifying information about you to fraudulently represent that that person is you for the purpose of making financial or credit transactions in your name, to obtain anything of value, or to avoid legal consequences.

(2) Article 19C of Chapter 14 of the General Statutes also prohibits the sale, purchase, or transfer of identifying information for the purpose of committing, or assisting in the commission of, any of the acts described in subdivision (1).

(3) G.S. 75-62 limits the ways in which businesses can solicit from you and use your Social Security Number.

(4) G.S. 75-63 allows you to place a security freeze on your credit report, which prevents credit reporting agencies from releasing your credit report to third parties. This is designed to prevent credits, loans, and services, from being approved in your name without your consent.

(5) G.S. 75-64 requires that businesses that maintain personal information about residents of this State take reasonable steps to protect against unauthorized access to that information after its disposal.

(6) G.S. 75-65 requires that businesses notify you if there has been a security breach with respect to your personal information.

(7) G.S. 75-66 prohibits the disclosure of personal information by a person who knows that you have previously objected to such a disclosure.

Despite the existence of these protections, your best defense against having your identity stolen is to be careful about how you store and disseminate sensitive personal information.'

(b) This section does not apply to private personnel services, as that term is defined in G.S. 95-47.1, or to job listing services, as that term is defined in G.S. 95-47.19.

(c) A violation of this section is a Class 3 misdemeanor."

SECTION 4. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1478 A BILL TO BE ENTITLED AN ACT TO PROTECT THE SEAL OF A LICENSED DESIGN PROFESSIONAL IN BUILDING INSPECTION DOCUMENTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1478:
Design Professional Seals/Public Records

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	May 11, 2009
Introduced by:	Rep. Tillis	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Counsel

SUMMARY: House Bill 1478 would protect the seal of a licensed design professional in building inspection documents.

CURRENT LAW: The Public Records Law provides that it is the policy of the State that the people may obtain copies of their public records at free or minimal cost unless otherwise provided by law. Under current law, nothing requires a public agency or its subdivision to disclose information that:

- Constitutes a "trade secret" under the Trade Secrets Protection Act and meets some additional conditions.
- Reveals an account number for electronic payment as defined in the Statewide Accounts Receivable Program.
- Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to the Advance Health Care Directive Registry.
- Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

BILL ANALYSIS: House Bill 1478 add to the list of confidential information that is not required nor authorized to be disclosed by a public agency or its subdivision any information that reveals the seal of a licensed design professional that has been submitted for project approval to (1) a municipality under Part 5 (Building Inspection) of Article 19 of GS Chapter 160A or (2) a county under Part 4 (Building inspection) of Article 18 of GS Chapter 153A.

It requires a municipality or a county who receives a request for a document, which would otherwise be a public record except for containing such a seal, to allow a copy of the document without the seal to be examined and copied, consistent with any rules adopted by the licensing board.

EFFECTIVE DATE: This act becomes effective July 1, 2009.

H1478-SMRN-38(e1) v3

HOUSE BILL 1478

Short Title:	Design Professional Seals/Public Records.	(Public)
Sponsors:	Representative Tillis.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE SEAL OF A LICENSED DESIGN PROFESSIONAL IN BUILDING INSPECTION DOCUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
  a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
  b. Is the property of a private "person" as defined in G.S. 66-152(2).
  c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
  d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

(5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall

allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document."

SECTION 2. This act becomes effective July 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1289 A BILL TO BE ENTITLED AN ACT TO FORBID CONTRACTING AS LOTTERY RETAILERS BUSINESSES WHO PRIMARILY CASH CHECKS, DRAFTS, OR MONEY ORDERS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 1289:
No Lottery at Check Cashing Sites

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 9, 2009
Introduced by:	Reps. Harrison, Fisher, Lucas, Samuelson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition H1289-CSRO-36		

SUMMARY: ***House Bill 1289 amends the law governing the North Carolina State Lottery to prohibit the Commission from contracting with check-cashing businesses to act as lottery retailers.***

The PCS clarifies that the exclusion applies to those required to be licensed as check-cashing businesses by the Commissioner of Banks.

CURRENT LAW:

Under current law, the Lottery Commission can contract with retailers to sell tickets for lottery games upon such terms and conditions as it considers appropriate. The Director recommends to the Commission those with whom to contract as lottery game retailers. The Director may not recommend any of the following:

- A person under the age of 21.
- A person who only sells lottery tickets or operates electronic computer terminals or devices for entertainment.
- A person who owes taxes, interest, or penalties to the State.
- A person who resides with a Commission member, the Director, or any employee of the Commission.

BILL ANALYSIS:

House Bill 1289 adds to the list of those who are not eligible for recommendation as a lottery retailer. The bill precludes those who derive the majority of their revenue from cashing checks, drafts, or money orders.

The PCS clarifies that the exclusion applies to those who are required to be licensed as check-cashing businesses by the Commissioner of Banks.

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

H1289-SMRO-83(CSRO-36) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1289
Committee Substitute Favorable 5/5/09

Short Title: No Lottery at Check Cashing Sites. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO FORBID CONTRACTING AS LOTTERY RETAILERS BUSINESSES WHO PRIMARILY CASH CHECKS, DRAFTS, OR MONEY ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-141 reads as rewritten:

"**§ 18C-141. Selection of lottery game retailers.**

(a) The Director shall recommend to the Commission those persons with whom to contract as lottery game retailers. To the extent practicable, the Director shall meet the minority participation goals under Article 8 of Chapter 143 of the General Statutes.

(b) The Director may not recommend contracting with any of the following:

(1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.

(2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.

(3) A person who is not current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes. Upon request of the Director, the Department of Revenue shall provide this information about a specific person to the Commission.

(4) A person who resides in the same household as a member of the Commission, the Director, or any other employee of the Commission.

(5) A person who would have, other than lottery sales, the cashing of checks, drafts, or money orders as the majority of net revenue.

(c) Upon approval of the Commission, the Director shall enter into a contract with the person to sell tickets or shares upon such terms and conditions as the Commission directs."

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

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Tuesday, May 12, 2009
TIME: 15 min. after House session
LOCATION: 1228 LB
COMMENTS: Special Committee Meeting – 15 Minutes after House Session

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1228	ABC Rules/Private Clubs.	Representative Gibson, III
HB 1384	Shopping Carts/Prevent Exposure to Germs.	Representative Jones
HB 1388	Brownfields Property Notifications.	Representative Fisher
HB 1490	Extend Permits Regarding Land Development.	Representative Ty Harrell Representative Goforth Representative Dollar Representative Tillis

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:45 p.m. on **May 12, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Tuesday, May 12, 2009
6:30 P.M.
Room 1228, LB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 1228	ABC Rules/Private Clubs	Representative Gibson, III
HB 1384	Shopping Carts/Prevent Exposure to Germs	Representative Jones
HB 1388	Brownfields Property Notifications	Representative Fisher
HB 1490	Extend Permits Regarding Land Development	Representative Harrell Representative Goforth Representative Dollar Representative Tillis

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Tuesday, May 12, 2009
6:30 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Tuesday, May 12, 2009, in Room 1228, Legislative Building at 6:30 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Vice Chair; Representatives Boles, Brown, Cole, Farmer-Butterfield, McGee, Mills, Pierce, Steen, and Wray. Staff Counsel Walker Reagan and Denise Huntley were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, and Sergeants-at-Arms. She made an announcement that the Committee would meet on Wednesday, May 13, 2009, in Room 544 LOB at 8:30 a.m.

The Chair announced the following bills:

HB 1228 - A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.
Sponsor: Representative Gibson, III
Representative Mills moved to adopt the proposed committee substitute, and it was adopted. Representative Gibson explained that the proposed committee substitute was a change to move the words around substantive to the bill. The bill originated as a discussion of people in the hospitality industry and grew into a full blown alcohol policy discussion in the ABC Committee. He said there was not opposition to removing the 3-day wait period for private clubs to serve alcohol with the understanding that should they not become a problem for the ABC Commission who reviews the permits. If so, they will come back and retract them. He said the hospitality industry endorsed the bill. Representative Gibson felt that it was the right next best step in making sure that we are prepared for responsible alcohol legislation and knew of no opposition. Reverend Mark Creech, Executive Director, Christian Action League appeared before the Committee. He originally did not have concerns about the bill in the ABC Committee, but raised questions that made him increasingly uncomfortable with the legislation. His concern was if the 3-day waiting period were removed, what would distinguish the difference between a private club and a bar. And, are bars inadvertently being created by this legislation. If the 3-day waiting period were removed, what is left to distinguish the difference between a restaurant and a private club. If we do, what is to hold restaurants to the 70/30 alcohol to food ratio. Representative Gibson said that restaurants do not oppose the bill. Discussion followed. Representative McGee moved for a favorable report to the proposed committee substitute for HB 1228, unfavorable to the original bill. The motion passed.

Representative Gibson asked the Chair allow him to briefly give an overview of H1335, original short title: No Duplicative Regulation of Air Toxics that will be heard in the Committee on May 13, 2009. He advised that since that time, a proposed committee substitute had been crafted, much less onerous to some of the green community and some people at DNER. He said that it is a very important bill for the business community which is the reason is has come to this Committee.

HB 1384 - A BILL TO BE ENTITLED AN ACT TO ENACT THE NORTH CAROLINA SHOPPING CARTS ACT TO PROTECT SHOPPERS FROM EXPOSURE TO GERMS, VIRUSES, BACTERIA, AND OTHER CONTAMINANTS. Sponsor: Representative Jones
Representative Pierce moved for adoption of the proposed committee substitute, and it was adopted. Representative Adams explained the bill on behalf of Representative Jones. She said the bill passed favorably in the Health Committee. It is a health issue and would encourage retail establishments who provide shopping carts to make available to the public free sanitation wipes that could be used to sanitize the handles. It was her understanding there is a certain amount of disease transmitted (such as body fluids, blood, etc.) found on shopping cart handles. The bill is designed to help sanitize these cart handles to protect the public. She said the NC Department of Health supported the bill and they are going to incorporate it into their education campaign. It is permissive and is to encourage retail establishments to do it. Discussion followed. Representative Farmer-Butterfield moved for a favorable report to the proposed committee substitute #2 for HB 1384, unfavorable to committee substitute #1. The motion passed.

HB 1388 – A BILL TO BE ENTITLED AN ACT TO EXPAND THE PUBLIC NOTICE REQUIREMENT REGARDING A PROSPECTIVE DEVELOPER'S INTENT TO REDEVELOP A BROWNFIELDS PROPERTY.
Sponsor: Representative Fisher
Jennifer Mundt, Legislative Analyst, Research Division presented the bill for Representative Fisher. Ms. Mundt staffs the House Committee on Environment and Natural Resources. The bill was heard in that Committee on May 11, 2009, and it received a favorable report. She said the bill would amend some notification requirements for prospective developers who would like to develop a Brownfields Development. (See bill summary). Discussion followed. Representative Cole moved for a favorable report for HB 1388. The motion passed.

HB 1490 - A BILL TO BE ENTITLED AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.
Sponsors: Representatives Harrell, Goforth, Dollar, Tillis
Jennifer Mundt, Legislative Analyst, Research Division presented the bill for Representative Harrell. She said the bill was heard Tuesday, May 5 and received a favorable report out of the House Committee on Environment and Natural Resources. The bill extends any permits that relate to land development, builders, residential, commercial, and industrial development that have been obtained from either local, county or municipalities as well permits obtained by DENR. It extends the duration of those

permits up to two years for people who have had problems obtaining credit or fallen on hard economic times and have not been able to go forward with their prospective development. The time on the permits will not go forward until such time which gives them more time. Discussion followed. Representative Cole moved for a favorable report for HB 1490. The motion passed.

The meeting adjourned at 6:53 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 12, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	DENR
Rev. Mark Creech	CAL
Elizabeth Dalton	NCRMA
Cody Thomas	NC Assn of Realtors
Patrick Buffkin	[illegible]
J E Hobbs	HANC
Amy Schilder	MWC
[illegible]	MCIC
Rick Zechini	NC Assn of Realtors
Jessi Hayes	NC HBA
[illegible]	NMRS

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 12, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Monaghan	Piedmont Natural Gas Co.

House Pages

Commerce

Name of Committee : _____ **Date**: 5/12/09

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

Name: Martin

2. Name: Coker

3. Name: Avent
Gadson

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1228 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1228
PROPOSED COMMITTEE SUBSTITUTE H1228-PCS10973-RU-8

Short Title: ABC Rules/Private Clubs. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1008 reads as rewritten:

"**§ 18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also ~~include, but need not be limited to,~~ include requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. ~~beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1228

Short Title:	ABC Rules/Private Clubs.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Alcoholic Beverage Control, if favorable, Commerce, Small Business, and Entrepreneurship.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1008 reads as rewritten:

"**§ 18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also include, but need not be limited to, requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. ~~beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.~~"

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

HOUSE BILL 1228:
ABC Rules/Private Clubs

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 12, 2009
Introduced by:	Rep. Gibson	**Prepared by:**	O. Walker Reagan Staff Attorney Denise Huntley Staff
Analysis of:	H1228-CSRU-8		

SUMMARY: The Proposed Committee Substitute for House Bill 1228 would amend G.S. 18B-1008 concerning the authority of the ABC Commission to adopt rules concerning private clubs, by deleting the specific grant of authority to adopt a rule requiring that a private club have a waiting period for membership.

CURRENT LAW: G.S. 18B-1000(5) defines a private club as "An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests." Under 18B-1001, when the issuance of the permit is lawful in the jurisdiction in which the premises are located, private clubs are eligible for on-premises beer and wine permits and mixed beverage or brown bagging permits.

G.S. 18B-1008 grants the ABC Commission "broad discretion in further defining the kinds of places eligible for permits." Rules concerning private clubs may also include, but need not be limited to, requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, that the club provide facilities or activities other than those directly related to the use of alcoholic beverages, and that the club have a waiting period for membership, not exceed 30 days. Pursuant to this statutory authority, the ABC Commission adopted Rule 2S.0107, which sets out special requirements for private clubs. The rule expands upon the definition of a private club by setting out "typical characteristics" that the Commission will consider in determining whether an establishment is indeed a private club -- such as whether membership is subject to clearly stated requirements, whether members can and do participate in its organizational affairs, and whether membership entitles a person to significant privileges other than the consumption of alcoholic beverages. In addition, the rule sets forth a number of mandatory requirements that an establishment must comply with in order to qualify as a private club -- including collection of an annual membership fee, requiring each prospective member to complete a written application, and a requirement that the establishment grant no membership sooner than three days after receipt of application.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1228 would amend G.S. 18B-1008 concerning the authority of the ABC Commission to adopt rules concerning private clubs, by deleting the specific grant of authority to adopt a rule requiring that a private club have a waiting period for membership.

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

Brenda Carter, counsel to the House Alcohol Beverage Control Committee, substantially contributed to this summary.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1384 A BILL TO BE ENTITLED AN ACT TO ENACT THE NORTH CAROLINA SHOPPING CARTS ACT TO PROTECT SHOPPERS FROM EXPOSURE TO GERMS, VIRUSES, BACTERIA, AND OTHER CONTAMINANTS.

☒ With a favorable report as to Committee Substitute Bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1384
Committee Substitute Favorable 5/7/09
PROPOSED COMMITTEE SUBSTITUTE H1384-PCS70434-RU-9

Short Title: Shopping Carts/Prevent Exposure to Germs. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROTECTION OF SHOPPERS FROM EXPOSURE TO GERMS, VIRUSES, BACTERIA, AND OTHER CONTAMINANTS ON SHOPPING CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 13. Shopping Cart Sanitation.

"**§ 130A-288. Sanitation practices in certain retail mercantile establishments.**

(a) The purpose of this section is to protect consumers from shopping cart handles that may be contaminated with bodily fluids, including blood, saliva, mucus, and urine, and fecal matter, by encouraging that the means to disinfect or sanitize nonporous surfaces on shopping carts be provided to the public.

(b) As used in this section, the following definitions mean:

(1) Retail mercantile establishment. – A place of business where merchandise is displayed, held, or stored and sold or offered for sale to the public.

(2) Shopping cart. – A push cart of the type that is commonly provided by a retail mercantile establishment for public use in the transportation of merchandise within the premises of the retail mercantile establishment and from the retail mercantile establishment to a place outside the premises of the retail mercantile establishment.

(c) A retail merchandise establishment that provides shopping carts may make available to the public free sanitation wipes at the entrance to its premises for use by the public.

(d) The Department or any local board of health shall encourage retail mercantile establishments to make available to the public free sanitation wipes at the entrance to its premises and shall provide information on the benefits to the general public of providing the sanitation wipes.

(e) Nothing in this section shall be construed to establish a private right of action against a person for failure or refusal to comply with this section."

SECTION 2. This act becomes effective October 1, 2009.

HOUSE BILL 1384:
Shopping Carts/Prevent Exposure to Germs

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 12, 2009
Introduced by:	Rep. Jones	**Prepared by:**	O. Walker Reagan Staff Attorney Denise Huntley Staff
Analysis of:	H1384-CSRU-9		

SUMMARY: ***The Proposed Committee Substitute would encourage retail mercantile establishments who provide shopping cards to make available to their consuming public free sanitation wipes that can be used to sanitize shopping cart handles. The Department of Environment and Natural Resources or the local board of health is required to encourage retail mercantile establishments to make free sanitation wipes available to its consuming public.***

CURRENT LAW: There is no specific law requiring merchants who provide shopping carts to offer to the public the means to sanitize the carts.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1384 would allow retail mercantile establishments that provide shopping carts to the public to make free sanitation wipes available to the public in order to protect consumers from possible contamination from contact with shopping cart handles.

The bill would require the Department of Health and Human Services, or any local board of health, to encourage retail mercantile establishments to make available to the public free sanitation wipes and to inform the merchants of the benefits of providing the sanitation wipes.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

Ben Popkin, counsel to the House Health Committee, contributed to this summary.

H1384-SMRU-5(H1384-CSRU-9) v3

HOUSE BILL 1384
Committee Substitute Favorable 5/7/09

Short Title: Shopping Carts/Prevent Exposure to Germs. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA SHOPPING CARTS ACT TO PROTECT SHOPPERS FROM EXPOSURE TO GERMS, VIRUSES, BACTERIA, AND OTHER CONTAMINANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 13. Shopping Cart Sanitation.

"**§ 130A-288. Sanitation practices in certain retail mercantile establishments.**

(a) This act shall be known and may be cited as the Shopping Cart Sanitation Wipe Act. The purpose of this act is to protect consumers from shopping cart handles that may be contaminated with bodily fluids such as blood, saliva, mucus, and even urine and fecal matter, for the purpose of disinfecting or sanitizing a nonporous surface.

(b) As used in this section, the following terms are defined:

(1) 'Retail mercantile establishment.' – A place of business where merchandise is displayed, held, or stored and sold or offered for sale to the public.

(2) 'Shopping cart.' – A push cart of the type that is commonly provided by a retail mercantile establishment for public use in the transportation of merchandise within the premises of the retail mercantile establishment and from the retail mercantile establishment to a place outside the premises of the retail mercantile establishment.

(c) A retail merchandise establishment that provides shopping carts may make available to the public, at no cost, sanitation wipes at the entrance to its premises for use by the public.

(d) The Department or any local board of health shall encourage retail mercantile establishments to make available to the public, at no cost, sanitation wipes at the entrance to its premises, including in such notice the benefits to the general public of providing the sanitation wipes.

(e) Nothing in this act shall be construed to establish a private right of action against a person for failure or refusal to comply with this section."

SECTION 2. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1388 A BILL TO BE ENTITLED AN ACT TO EXPAND THE PUBLIC NOTICE REQUIREMENT REGARDING A PROSPECTIVE DEVELOPER'S INTENT TO REDEVELOP A BROWNFIELDS PROPERTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 1388
Committee Substitute Favorable 5/11/09

Short Title: Brownfields Property Notifications. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE PUBLIC NOTICE REQUIREMENT REGARDING A PROSPECTIVE DEVELOPER'S INTENT TO REDEVELOP A BROWNFIELDS PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.34 reads as rewritten:

"**§ 130A-310.34. Public notice and community involvement.**

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is ~~located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register.~~located. The prospective developer shall ~~also~~conspicuously post a copy of the summary of the Notice of Intent at the brownfields~~site.~~ property, and the prospective developer shall mail or deliver a copy of the summary to each owner of property contiguous to the brownfields property. The prospective developer shall submit documentation of the public notices to the Department prior to the Department entering into a brownfields agreement.

(b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina Register and publication~~ in a newspaper of general ~~circulation~~ circulation, posting the summary at the brownfields property, and mailing or delivering the summary to each owner of property contiguous to the brownfields property shall begin a public comment period of at least 30 days from the ~~later~~ latest date of ~~publication.~~publication, posting, and mailing or delivering. During

the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 21 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 15 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to ~~any other person who had previously requested notice.~~each owner of property contiguous to the brownfields property. The Department shall also direct the prospective developer to publish, at least 15 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property."

SECTION 2. This act becomes effective October 1, 2009, and applies to Notices of Intent to Redevelop a Brownfields Property and summaries of Notices of Intent submitted on or after that date.

HOUSE BILL 1388:
Brownfields Property Notifications

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 12, 2009
Introduced by:	Rep. Fisher	**Prepared by:**	O. Walker Reagan Staff Attorney Denise Huntley Staff
Analysis of:	Second Edition		

SUMMARY: House Bill 1388 would expand the public notice requirement regarding a prospective developer's intent to redevelop a brownfields property.

BACKGROUND: A "brownfields site" is an abandoned, idled, or underused property where the threat of environmental contamination has hindered its redevelopment. The N.C. Brownfields Program is administered by the Division of Waste Management in the Department of Environment and Natural Resources (DENR). The Brownfields Property Reuse Act of 1997 (S.L. 1997-357) directs DENR to work with prospective developers to put brownfields sites back into reuse. The prospective developer is any person who desires to buy or sell a brownfields property for the purpose of redeveloping it and who did not cause or contribute to the contamination at the property.

DENR enters into an agreement with the developer that is in effect a covenant not-to-sue, contingent on the developer making the site suitable for the reuse proposed. The brownfields agreement provides both the site-specific actions necessary to make the site suitable for reuse and the covenant not-to-sue once these actions are complete. A brownfields agreement is designed to break environmental liability barriers that hinder a developer's ability to obtain project financing. The agreement specifies actions to be conducted by the developer that are based on making the site suitable for the use intended.

CURRENT LAW: G.S. 130A-310.34 provides that a prospective brownfields property developer must submit a Notice of Intent to Redevelop a Brownfields Property (NOI) and a summary of the NOI to DENR. After DENR approves the NOI and the summary of the NOI, the prospective developer must do all of the following:

- Provide the NOI to all local governments having jurisdiction over the brownfields property.
- File the NOI with the Codifier of Rules for publication in the North Carolina Register.
- Publish the summary of the NOI in a newspaper of general circulation serving the area in which the brownfields property is located.
- Conspicuously post a copy of the summary of the NOI at the brownfields property.

A minimum 30-day public comment period on the prospective brownfields development begins on the latest date of publication of the approved summary of the NOI in a newspaper of general circulation. The law requires DENR to provide at least 15 days notice of a public meeting on a proposed brownfields agreement by mail to all persons who requested the public meeting and to any other person who requested notice.

BILL ANALYSIS:

House Bill 1388 would change and expand the public notice requirements for prospective brownfields developers as follows:

- Removes the requirement to file the summary of the NOI with the Codifier of Rules for publication in the North Carolina Register.
- Adds a requirement that a copy of the summary of the NOI be mailed or delivered to each owner of property contiguous to the brownfields property.

The bill provides that the date on which the 30-day public comment period begins is the latest of the dates that the summary of the NOI is published in a newspaper of general circulation, posted conspicuously at the brownfields location, or mailed or delivered to contiguous property owners.

The bill changes DENR's notice of a public meeting on a brownfields agreement to include each owner of property contiguous to the brownfields property.

EFFECTIVE DATE: This act becomes effective October 1, 2009 and applies to Notices of Intent to Redevelop a Brownfields Property and summaries of NOIs submitted on or after that date.

Jennifer Mundt, legislative analyst to the House Environment and Natural Resources Committee, substantially contributed to this summary.

H1388-SMRU-6(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1490 A BILL TO BE ENTITLED AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HOUSE BILL 1490:
Extend Permits Regarding Land Development

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	May 12, 2009
Introduced by:	Reps. Harrell, Goforth, Dollar, Tillis	**Prepared by:**	O. Walker Reagan Staff Attorney Denise Huntley Staff
Analysis of:	Second Edition		

SUMMARY: House Bill 1490 would extend the duration of certain permits and approvals affecting physical development of real property in the State.

[As introduced, this bill was identical to S831, as introduced by Sen. Clodfelter, which is on the Senate Floor for 2nd reading.]

BILL ANALYSIS: House Bill 1490 would extend the term of certain government-issued permits and approvals for a finite term. The bill would automatically suspend the running of a permit or approval that is in existence for the term January 1, 2007 through December 31, 2010 for:

- Environmental impact statements and findings of no significant impact required pursuant to the State Environmental Policy Act.
- Erosion and sedimentation control plan approvals granted by the North Carolina Sedimentation Control Commission or local government.
- Coastal Area Management Act (CAMA) major permits, minor permits, and any other permit issued under CAMA.
- Building permits issued under the State Building Code.
- Water discharge permits issued by the Department of Environment and Natural Resources (DENR).
- Stream origination certifications and water quality certifications issued by DENR.
- Air quality permits issued by the Environmental Management Commission (EMC).
- Approval of sketch plans, preliminary plats or plats regarding subdivision of land, site specific development plans or phased development plans, development agreements, or building permits issued by cities or counties.
- Certificates of appropriateness issued by a preservation commission of a city.

The suspension period for any permit or approval would not extend beyond June 30, 2011. The automatic extension authorized under this act would not apply to the following:

- Any permit or approval that has been substantially altered since the time when the permit or approval was granted (includes change of ownership or a change to the permit that increases by 10% or more the population or geographic area to be served by the development project).
- Permits issued by the federal government.
- Permits or approvals issued within an area of environmental concern as defined by CAMA.

- Department of Transportation permits other than a right-of-way permit.

The bill would not affect any administrative consent order issued by DENR in effect or issued during the extension. The Secretary of Environment and Natural Resources and the EMC may modify or revoke a specific permit or approval if the permit or approval provides for such modification or revocation.

The bill contains provisions for connections to sanitary sewer systems contingent on the availability of sufficient capacity. If sufficient capacity is not available, permit holders with approved extensions will have priority on additional capacity over approved holders who did not receive approval of a sanitary sewer connection prior to the effective date of this bill. Priority regarding the distribution of additional treatment capacity for permit holders receiving extensions will be allocated in order of the granting of the original approval of the connection.

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

Jennifer Mundt, legislative analyst to the House Environment and Natural Resources Committee, substantially contributed to this summary.

H1490-SMRU-7(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1490*
Committee Substitute Favorable 5/6/09

Short Title: Extend Permits Regarding Land Development. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension Act of 2009."

SECTION 2. The General Assembly makes the following findings:

(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including homebuilders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

(5) The process of obtaining the myriad other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or re-obtain.

(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants, due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

(11) Due to the current inability of builders and their purchasers to obtain financing, under existing economic conditions, more and more once-approved permits are expiring or lapsing and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

(12) As a result of the continued downturn of the economy, and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) Obtaining extensions of approvals granted by State government is frequently impossible, always difficult, and always expensive, and no policy reason is served by the expiration of these permits, which were approved only after thorough review of the application.

(15) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions, by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

SECTION 3. Definitions. – As used in this act, the following definitions apply:

(1) Approval. – Except as otherwise provided in Section 4 of this act, any detailed statement by a State agency under G.S. 113A-4; any detailed statement submitted by a special-purpose unit of government or a private developer of a major development project under G.S. 113A-8; any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes; any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes; any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes; any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes; any building permit issued under Article 9 of Chapter 143 of the General Statutes; any discharge, nondischarge, or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes; any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes; any water quality certification under Article 21 of Chapter 143 of the General Statutes; any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes; any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes; any approval by a city of sketch plans, preliminary plats, or plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes; any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes; when the approval under this subdivision pertains to the development of land or to the provision of water or wastewater services by a government entity and whether the approval under this subdivision is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement, or any other executive or administrative decision that allows the development or provision of services to proceed.

(2) Area of environmental concern. – An area designated under G.S. 113A-113 by the Coastal Resources Commission.

(3) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

(4) Extension period. – The period beginning January 1, 2007, and continuing through December 31, 2010.

(5) Government. – Any municipal, county, regional, or State government, or any agency, department, commission, or other instrumentality thereof.

(6) Substantially altered. – Any change to the plans regarding the approval under subdivision (1) of this section that does not constitute a "permit amendment" or a "new permit," including a change in ownership or corporate structure of a permitted facility, a change to the permit that is the subject of the approval that increases by ten percent (10%) or more the population or the geographic area to be served by the development project, or a change in the category or characterization of the development project. As used in this subdivision, "permit" includes any license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement, or any other executive or administrative decision that allows a development or governmental project to proceed.

SECTION 4.(a) For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period. Nothing in this act shall shorten the duration that any approval would have had in the absence of this act, nor shall this act prohibit the granting of such additional extensions as are provided by law when the tolling granted by this act expires.

SECTION 4.(b) Nothing in this act shall be deemed to extend or purport to extend:

(1) Any permit or approval under Section 3 of this act when the permit or approval is for a development project that has been substantially altered since the permit or approval was granted, as determined by the government that granted the permit or approval.

(2) Any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or to any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

(3) Any permit or approval issued within an area of environmental concern.

(4) Any Department of Transportation permit other than a right-of-way permit.

SECTION 4.(c) This act shall not affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued during the extension period.

SECTION 4.(d) Nothing in this act shall affect the ability of the Secretary of Environment and Natural Resources to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Department of Environment and Natural Resources. Nothing in this act shall affect the ability of the Environmental Management Commission to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Environmental Management Commission.

SECTION 4.(e) In the event that any approval tolled pursuant to this act is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the effective date of this act. Priority regarding the distribution of

further gallonage to any permit holder who has received the extension of an approval pursuant to this act shall be allocated in order of the granting of the original approval of the connection.

SECTION 4.(f) Nothing in this act shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

SECTION 5. Each State agency shall, within 30 days after the effective date of this act, place a notice in the North Carolina Register tolling all approvals in conformance with this act.

SECTION 6. The provisions of this act shall be liberally construed to effectuate the purposes of this act.

SECTION 7. This act is effective when it becomes law.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 13, 2009
TIME: 8:30 am
LOCATION: 544 LOB
COMMENTS: **Special Committee Meeting**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1335	No Duplicative Regulation of Air Toxics.	Representative Gibson, III

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 7:15 p.m. on **May 12, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, May 13, 2009
8:30 A.M.
Room 544, LOB

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 1335	No Duplicative Regulation of Air Toxics	Representative Gibson, III

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, May 13, 2009
8:30 A.M.
Room 544, Legislative Office Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, May 13, 2009, in Room 544, Legislative Office Building at 8:30 a.m. The following members were present: Representative Dickson, Chair; Representatives Starnes, and Wilkins, Vice Chairs; Representatives Blackwell, Blackwood, Boles, Brown, Frye, Gillespie, McGee, Mills, Rapp, Samuelson, and Tarleton. Staff Counsel Drupti Chauhan, Brad Krehely, and Jeff Hudson were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bill:

HB 1335 - A BILL TO BE ENTITLED AN ACT TO REDUCE STATE REGULATION OF EMISSIONS OF AIR TOXICS WHEN THESE EMISSIONS ARE REGULATED UNDER THE FEDERAL CLEAN AIR ACT. Sponsor: Representative Gibson, III
Representative Blackwood moved to adopt the proposed committee substitute #2, and it was adopted. Representative Gibson explained that the proposed committee substitute is friendlier in DENR's opinion. It essentially said that if you can demonstrate a way that your method of testing for air toxins is better, then that will be permitted. Representative Gibson asked for the Committee's support of the bill. The Chair recognized staff for a technical explanation. Jeff Hudson explained that the bill was still dealing with air toxics, but was different than the bill that was before the House Committee on Environment and Natural Resources. In the bill as introduced, at the bottom of the proposed committee substitute, a new subsection was added to the air emission permitting statute. He said the way Representative Gibson explained it was correct for air emission sources that are regulated under federal law. This would allow them to demonstrate that they are not going to exceed hazardous air pollutant emission control standards either through modeling (the method used now) or through another method approved by the Commission. Representative Gibson advised that industry and regulators were also involved and are fully aware of this. Discussion followed. Representative Blackwood moved for a favorable report to the proposed committee substitute unfavorable to the original bill. The motion passed.

The meeting adjourned at 8:57 a.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 13, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Shaw	Wake Up Wake County
Daniel Ambourn	Electricities of N.C., Inc.
Sara Nielson	NC Department of Commerce
Doug Lassiter	NCSTA
Robert Howard	NCIC
Scott Gardner	Duke Energy
[illegible]	NCIC
George Everett	Duke Energy
Kathy Hawkins	Progress Energy
John Goodman	NC Chamber
[illegible]	NCRA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 13, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Merritt	McGuire Woods
Elizabeth Ouzts	Environment North Carolina
Robin Smith	DENR
Elizabeth Biser	DENR
Keith Overcash	DAQ
Loki Cherry	DENR-DAQ
Drew Ball	Sierra Club
Dan Crawford	CCNC
Tom Beam	NC EDC
Molly Diggins	Sierra Club
David Bray	MWC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 13, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Sines	Dell
Amy McConkey	Smith Anderson
Henry Hinton	N.C. B.I.A.
Mia Bailey	Electric Cities of NC, Inc

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 13, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	Weyerhaeuser
David Barnes	Ryan Sprunk

House Pages

COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP

Name of Committee: _____ **Date:** MAY 13, 2009

1. Name: Taylor Turnas — OAK Ridge Academy
   County: Randolph
   Sponsor: Joe Hackney
2. Name: Rob Lytle
   County: Colonial Heights VA
   Sponsor: Joe Hackney
   Name: Patricic Paul
   County: Nassau, Bahamas
   Sponsor: Joe Hackney
4. Name: Mitchell Marlowe
   County: Springfield Gradens, NY
   Sponsor: Joe Hackney
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

Name: FRED HINES 4. JOHN BRANDON

2. Name: MARTHA GADISON

3. Name: HENRY WORTH

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

HB 1335 A BILL TO BE ENTITLED AN ACT TO REDUCE STATE REGULATION OF EMISSIONS OF AIR TOXICS WHEN THESE EMISSIONS ARE REGULATED UNDER THE FEDERAL CLEAN AIR ACT.

☒ With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

NOTE:

No Bill Summary was prepared for HB 1335.

Short Title: No Duplicative Regulation of Air Toxics

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1335
Committee Substitute Favorable 5/12/09
PROPOSED COMMITTEE SUBSTITUTE H1335-PCS30391-SB-38

Short Title: Alternative Air Toxics Compliance. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF DEMONSTRATING THAT A NEW OR MODIFIED SOURCE OF HAZARDOUS AIR POLLUTANT EMISSIONS WILL NOT RESULT IN AN EXCEEDANCE OF HAZARDOUS AIR POLLUTANT EMISSION CONTROL STANDARDS THROUGH A MODELING ANALYSIS OR THROUGH ANOTHER METHOD APPROVED BY THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.108 reads as rewritten:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit for the activity from the Commission and has complied with any conditions of the permit:

(1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.

(2) Build, erect, use, or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted.

(4) Repealed by Session Laws 2003-428, s. 1, effective August 19, 2003.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b) (12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(e)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(a3) An air emission source that is subject to hazardous air pollutant emission control standards under 40 C.F.R. Pts. 61 and 63 (July 1, 2008 editions) and that is a Title V source subject to 40 C.F.R. § 70.3(a)(1) (July 1, 2008 edition) may demonstrate that a new or modified source of hazardous air pollutant emissions will not result in an exceedance of hazardous air pollutant emission control standards through a modeling analysis or through another method approved by the Commission.

...."

SECTION 2. This act becomes effective July 1, 2009.

HOUSE BILL 1335

Short Title:	No Duplicative Regulation of Air Toxics.	(Public)
Sponsors:	Representatives Gibson; Lucas and Parmon.	
Referred to:	Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE STATE REGULATION OF EMISSIONS OF AIR TOXICS WHEN THESE EMISSIONS ARE REGULATED UNDER THE FEDERAL CLEAN AIR ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107(a) reads as rewritten:

"(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

...

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This subdivision does not apply to ~~that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).~~any air emission source subject to hazardous air pollutant emission standards under 40 C.F.R. Pts. 61 and 63.

...."

SECTION 2. This act becomes effective July 1, 2009.

CORRECTED NOTICE

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 27, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Remove HB 1151

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
~~HB 1151~~	~~Res. Lead-Based Paint Hazards/Renovations.~~	~~Representative Farmer-Butterfield~~ ~~Representative Earle~~ ~~Representative England, M.D.~~ ~~Representative Rapp~~
SB 268	No Elected Off. Recomm./Certain Co./Notaries.	Senator Clodfelter
SB 448	Self-Service Storage Facilities.	Senator Hoyle
SB 625	No Deceptive Advertising/Business Location.	Senator Boseman
SB 634	Truth in Music Advertising Act.	Senator Weinstein
SB 647	Amend CPA Laws/Practice Privileges.	Senator Rand
SB 652	Prohibit Sale of Novelty Lighters.	Senator Allran

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:20 a.m. on May 27, 2009.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 27, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
SB 268	No Elected Off. Recomm./Certain Co./Notaries.	Senator Clodfelter
SB 448	Self-Service Storage Facilities.	Senator Hoyle
SB 625	No Deceptive Advertising/Business Location.	Senator Boseman
SB 634	Truth in Music Advertising Act.	Senator Weinstein
SB 647	Amend CPA Laws/Practice Privileges.	Senator Rand
SB 652	Prohibit Sale of Novelty Lighters.	Senator Allran

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:45 p.m. on **May 26, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, May 27, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 268	No Elected Off. Recomm./Certain Co./Notaries	Senator Clodfelter
SB 448	Self-Service Storage Facilities	Senator Hoyle
SB 625	No Deceptive Advertising/Business Location	Senator Boseman
SB 634	Truth in Music Advertising Act	Senator Weinstein
SB 647	Amend CPA Laws/Practice Privileges	Senator Rand
SB 652	Prohibit Sale of Novelty Lighters	Senator Allran

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, May 27, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, May 27, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, England, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Rapp, Samuelson, Steen, Tarleton, and Warren. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 268 - A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIVE THOUSAND TWO HUNDRED AND FIFTY NOTARIES PUBLIC. Sponsor: Senator Clodfelter
Representative Samuelson presented SB 268 for Senator Clodfelter. She said the House version of the bill came from the Mecklenburg delegation. The gist of it was that the law currently said that if there are more than 15,000 notary publics that other county elected officials do not have to sign off on it. Mecklenburg County dropped just below that number and asked for the number to be lowered, and it passed. When the bill got to the Senate, a couple other towns (larger urban areas) decided they wanted to be included. They then filed an amendment and lowered the number from 14,000 down to 5,250 so that Guilford, Forsyth, and Wake counties would also not have to have this requirement. She knew of no opposition to the bill, and wanted it to pass the Senate side so that Mecklenburg, Forsyth, Wake, and Guilford counties would also be exempted from having to have their public officials sign forms for people they have never met or know nothing about. Discussion followed. Representative Blackwood moved for a favorable report and recommend that the bill be referred to the Committee on Judiciary I. The motion passed.

SB 448 - A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE FACILITIES. Sponsor: Senator Hoyle
Representative Steen moved for adoption of the proposed House committee substitute, and it was adopted. Representative Cole presented SB 448 for Senator Hoyle.

Discussion followed. Representative McGee moved for a favorable report to House proposed committee substitute, unfavorable to the Senate committee substitute bill, and that the House committee substitute bill be re-referred to the Committee on Judiciary II. The motion passed.

SB 625 - A BILL TO BE ENTITLED AN ACT TO PROHIBIT DECEPTIVE ADVERTISING ABOUT GEOGRAPHICAL LOCATION BY BUSINESSES THAT SUPPLY PERISHABLE PRODUCTS. Sponsor: Senator Boseman
Senator Boseman presented SB 625. She said that it was a technical correction to the bill passed last session. This would protect consumers from being ripped off and from being mislead in the listings. Discussion followed. Representative Wilkins moved for a favorable report for SB 625 with a re-ferral to the Committee on Judiciary II. The motion passed.

SB 634 - A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR ENFORCEMENT, AND TO IMPOSE A PENALTY. Sponsor: Senator Weinstein
Representative Gillespie moved for adoption of the proposed House committee substitute bill, and it was adopted. Senator Weinstein said that the proposed House committee substitute changes the effective date. He said the purpose of the bill was to regulate impostor music groups who perform under the name of a famous group but include no people from that group. Representative Warren moved for a favorable report to the proposed House committee substitute, unfavorable to the original bill with a re-ferral to the Committee on Judiciary I. The motion passed.

SB 647 - A BILL TO BE ENTITLED AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO CERTIFIED PUBLIC ACCOUNTANTS AND ALLOWING PUBLIC ACCOUNTANTS CERTIFIED OR LICENSED OUTSIDE THIS STATE TO PRACTICE IN THIS STATE UNDER CERTAIN CIRCUMSTANCES. Sponsor: Senator Rand
Senator Rand presented SB 647 and said that it was a product of the CPA Association. He said that current law requires a CPA license in another jurisdiction to file a notice with the State Board and pay a fee prior to offering to provide CPA services in North Carolina. SB 647 eliminates the notice and fee requirement. Instead, it grants a practice privilege to any properly licensed CPA whose license in another state has passed a National Uniform CPA exam and has not been convicted of a crime involved in fraud, dishonesty, or deceit. It gives the Board additional strength. The bill is endorsed by the State Board and the CPA Association. Discussion followed. Representative Samuelson moved for a favorable report to SB 647 with a re-referral to the Committee on Finance. The motion passed.

SB 652 - A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE RETAIL SALE AND DISTRIBUTION OF NOVELTY LIGHTERS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE. Sponsor: Senator Allran
Representative Goforth moved for adoption of the proposed House committee substitute, and it was adopted. Senator Allran explained the proposed House committee substitute

bill. He said that it banned novelty lighters that look like toys. They are an attractive nuisance to children. They are dangerous and none are made in the United States. The Lighter Association in the United States wanted them banned. Representative Goforth moved for a favorable report to the proposed House committee substitute, unfavorable to the Senate committee substitute bill with a re-referral to the Committee on Judiciary III. The motion passed.

The meeting adjourned at 1:44 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 27, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Rachel O'Brien	PFF PNC
Butch Gunnells	NC Ber A
Gardner Payne	MWC
Robert M—	NCSSA
Allen Massey	NCSSA
Bill Sloggins	FCG
Greg Thompson	NFIB
AL DEITCH	DOA/YAIO
Gavin Clikeman	Durham Chamber of Commerce

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 27, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	WGR
Elizabeth Dalton	NCRMA
Andy Sliver	NCRMA
Sara Nelson	NCDOC
Jason Moore	SMITH ANDERSON
David Boaz	MWC
Jan Parker	Dept. of Insurance / OSFM
Tom Vitaglione	CFTF
Dave Dorn	Smith Anderson
Joan C. Klaus	NCACPA / BLACKMAN & SLOOP, CPAS, P.A.
Jim Ahler	N.C. ASSOCIATION OF CPAs

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 27, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John White	Durham Chamber of Commerce
Gary Harris	NCPCM
Doug Howey	NCPCM
[signature]	NS
Billy Guiclet	NCRC
[signature]	FANC
[signature]	NCBA
[signature]	PFFPNC.

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship May 27, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Fleming	BCBSNC
Emily Gallimore	NCBA

House Pages

COMMERCE SMALL BUSINESS @ ENTREPRENEURSHIP

Name of Committee _____ Date: 5-27-09

1. Name: Delise Barnard

County: Wake

Sponsor: Paul Stam

2. Name: Seth Oenlinger

County: Wayne

Sponsor: Efton Sager

Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: EARL COKER

2. Name: CHARLES WILLIAMS

3. Name: FRANK PREVO

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 268 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIVE THOUSAND TWO HUNDRED AND FIFTY NOTARIES PUBLIC.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 268:
No Elected Off. Recomm./Certain Co./Notaries

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	May 27, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 268 would remove in certain counties the requirement that applicants to be notaries public have the recommendation of an elected public official. Notary applicants would not have to obtain the recommendation if receiving the oath in a county where more than 5,250 active notaries public are on record (was 15,000).***

[As introduced, this bill was identical to H402, as introduced by Rep. M. Alexander, which is currently in Senate State and Local Government.]

CURRENT LAW: Notaries public must be commissioned by the Secretary of State's office. The qualifications for notary public are set forth in G.S. 10B-5. The applicant must meet the following requirements:

(1) Be at least 18 years of age or legally emancipated.
(2) Reside or have a regular place of work or business in North Carolina.
(3) Reside legally in the United States.
(4) Speak, read, and write the English language.
(5) Possess a high school diploma or equivalent.
(6) Pass the course of instruction required by statute, unless the person is a licensed member of the North Carolina State Bar.
(7) Purchase and keep as a reference the most recent manual approved by the Secretary of State that describes the duties and authority of notaries public.
(8) Submit a notarized application containing no significant misstatement or omission of fact.
(9) Obtain the recommendation of one publicly elected official in North Carolina and submit that recommendation with the application. This requirement does not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed.

The notary is commissioned in the county of residence, unless the residence is out of state. If residence is out of state, the notary is commissioned in the county of employment or business.

BILL ANALYSIS: Senate Bill 268 would reduce the number in the exemption from having a recommendation of a publicly elected official from 15,000 to 5,250 active notaries in a county.

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

BACKGROUND: According to the Secretary of State's Office, as of January 1, 2009, the following counties have more than 5,250 active notaries public – Wake (15,651), Mecklenburg (14,089), Guilford 7,256), and Forsythe (5,288).

'268-SMRN-74(e2) v1

R. Erika Churchill contributed substantially to the drafting of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 268
Second Edition Engrossed 3/24/09

Short Title:	No Elected Off. Recomm./Certain Co./Notaries.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 24, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIVE THOUSAND TWO HUNDRED AND FIFTY NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-5(b)(9) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than ~~15,000~~5,250 active notaries public are on record on January 1 of the year when the application is filed."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for
SB 448 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE FACILITIES.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 448
Commerce Committee Substitute Adopted 5/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S448-PCS15289-RN-30

Short Title: Self-Service Storage Facilities. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 44A of the General Statutes reads as rewritten:

"Article 4.

"Self-Service Storage Facilities.

...

"§ 44A-41. Self-service storage facility owner entitled to lien.

The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility. For purposes of this Article, to identify an existing security interest in stored property, the owner shall conduct an online search for Uniform Commercial Code financing statements filed with the Office of the Secretary of State in the name of the occupant.

...

"§ 44A-43. Enforcement of self-service storage facility lien.

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars ($2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;

b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by registered or certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

(1a) If the property upon which the lien is claimed is a motor vehicle and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(2) If the property upon which the lien is claimed is other than a motor vehicle, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known ~~address by registered or certified mail, return receipt requested.~~address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

The notice shall:

a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the

self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;

b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;

c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;

d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of ~~receipt~~ the mailing of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days ~~of receipt~~ from the date of the mailing of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by this section. Upon the expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may move the occupant's property to another place of safekeeping.

If the lienor is notified, within the 10-day period as provided by this section, that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be ~~mailed~~ delivered by registered or certified mail to the person having ~~legal title to~~ a security interest in the property if reasonably ascertainable, and to the occupant ~~if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof; and~~ at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

~~b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a~~

~~newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.~~

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, notice of sale shall be published in any publication that accepts classified advertisements and has a general circulation in the county where the sale is to be held.

(2) The sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M.:

a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(d) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;

(3) The place, date, and time of the sale.

"**§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.**

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted. The partial payment of rent or other charges shall not satisfy the lien or stop or delay the owner's right to sell the occupant's property unless the owner agrees to satisfaction or a stop or delay in a writing signed by the owner.

...

"**§ 44A-44.1. Possession vested in occupant.**

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in a storage space at a self-service storage facility shall remain vested in the occupant until the property is sold as provided in this Article or otherwise disposed of. The owner of a self-service storage facility is a commercial landlord who rents space. Unless the rental agreement specifically provides otherwise, while the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees.

...."

SECTION 2. This act becomes effective October 1, 2009.

SENATE BILL 448:
Self-Service Storage Facilities

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	May 27, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Second Edition S448-CSRN-30		Committee Co-Counsel

SUMMARY: ***Senate Bill 448 amends the Self-Service Storage Facilities Act which governs liens on personal property stored in self-service storage facilities. The Proposed Committee Substitute (PCS) clarifies that unless the rental agreement specifically provides otherwise, while the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees. The PCS also corrects a section number.***

CURRENT LAW:

Article 4 of Chapter 44A sets forth the law governing the creation and enforcement of a lien by the owner of a self-service storage facility. The law provides that when the rent and other charges remains unpaid for 15 days after the due date, the owner of the facility may enforce the lien by sale or other disposition of the property. When a lien is asserted against a motor vehicle, the owner must notify the Department of Motor Vehicles, which in turn must notify the person having legal title to the vehicle. Within 10 days of receipt of the notice, the person with legal title may request a hearing to contest the sale of the vehicle.

When the lien is asserted against property other than a motor vehicle, the owner must notify the occupant or a person having a security interest, if reasonably ascertainable, at the last known address by registered or certified mail, return receipt requested. Within 10 days of receipt of the notice, the occupant or person having a security interest may request a hearing to contest the sale of the property.

If a hearing is requested within the 10-day time period, a sale can only proceed pursuant to a court order. If no hearing is requested, the right to contest the sale is waived and the property may be sold. At least 20 days prior to the sale, the owner must mail another notice to the occupant and any other party with a legal interest in the property. The owner must also advertise the sale by posting the notice at the courthouse and by publishing the notice in a local newspaper for two consecutive weeks, with the last notice being at least 5 days prior to the sale.

Before the sale, the occupant may redeem the property by paying the amount owed and the reasonable expenses incurred by the owner.

BILL ANALYSIS:

The PCS for Senate Bill 448 makes the following changes to the law:

- Requires owners to conduct an online search for UCC filings with the Secretary of State in the name of the occupant. The law currently provides that a lien under this law does not take priority over a perfected security interest and notice must be given to "*reasonably ascertainable*" secured parties, but there is no requirement to conduct a search.

- Authorizes the towing of a motor vehicle upon which a lien is claimed when the debt remains unpaid for 60 days. The lienor is not liable for any damages to the motor vehicle once the tower takes possession of the property.
- Changes the service of the notice requirement when a motor vehicle is not involved from registered or certified mail, return receipt requested, to regular first-class mail. Also changes the start date of the 10-day period to contest from receipt by the occupant, to the date of mailing.
- Authorizes the owner to terminate the tenancy of the occupant at the expiration of the 10-day period. The lienor also may move the occupant's property to another place of safekeeping.
- Modifies the publication requirement by eliminating the requirement that the notice be posted at the courthouse and reducing the publication in a newspaper to once rather than for two consecutive weeks.
- Provides that the partial payment of rent or other charges will not satisfy the lien or delay the owner's right to sell the occupant's property unless the owner agrees in writing.
- Provides that unless the rental agreement provides otherwise, the care, custody, and control of the property stored at a self-service storage facility remains vested in the occupant until the property is sold. The owner of a self-storage facility is a commercial landlord who rents space. Unless the rental agreement provides otherwise, the owner is liable only for damage caused by the intentional acts or negligence of the owner or the owner's employees.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S448-SMRN-79(CSRN-30) v2

Karen Cochrane-Brown contributed substantially to the drafting of this summary.

SENATE BILL 448
Commerce Committee Substitute Adopted 5/4/09

Short Title: Self-Service Storage Facilities. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 44A of the General Statutes is amended to read as follows:

"Article 4.
"Self-Service Storage Facilities.

"...

"§ 44A-41. Self-service storage facility owner entitled to lien.

The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility. For purposes of this Article, to identify an existing security interest in stored property, the owner shall conduct an online search for Uniform Commercial Code financing statements filed with the Office of the Secretary of State in the name of the occupant.

"§ 44A-42. When self-service storage facility lien arises and terminates.

The lien conferred under this Article arises only when the owner acquires possession of the property stored in the self-service storage facility; and it shall terminate when the owner relinquishes possession of the property upon which the lien might be claimed, or when the occupant or any other person having a security or other interest in the property tenders prior to sale the amount of the rent, plus the expenses incurred by the owner for the preservation of the property. The reacquisition of possession of the property stored in the self-service storage facility, which was relinquished, shall not reinstate the lien.

"§ 44A-43. Enforcement of self-service storage facility lien.

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or

post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(b) Notice and Hearing:

(1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars ($2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:

a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;

b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and

c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by registered or certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

(1a) If the property upon which the lien is claimed is a motor vehicle and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(2) If the property upon which the lien is claimed is other than a motor vehicle, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known ~~address by registered or certified mail, return receipt requested.~~address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

The notice shall:

a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;

b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;

c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;

d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of ~~receipt~~ the mailing of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days ~~of receipt~~ from the date of the mailing of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by this section. Upon the expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may move the occupant's property to another place of safekeeping.

If the lienor is notified, within the 10-day period as provided by this section, that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

a. Shall cause notice to be ~~mailed~~ delivered by registered or certified mail to the person having ~~legal title to~~ a security interest in the property if reasonably ascertainable, and to the occupant ~~if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof; and~~ at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

~~b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.~~

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, notice of sale shall be published in any publication that accepts classified advertisements and has a general circulation in the county where the sale is to be held.

(2) The sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M.:

a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or

b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(d) Notice of Sale. – The notice of sale shall include:

(1) The name and address of the lienor;

(2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;

(3) The place, date, and time of the sale.

"**§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.**

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted. The partial payment of rent or other charges shall not satisfy the lien or stop or delay the owner's right to sell the occupant's property unless the owner agrees to satisfaction or a stop or delay in a writing signed by the owner.

...

"**§ 44A-44.1. Possession vested in occupant.**

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in a storage space at a self-service storage facility shall remain vested in the occupant until the property is sold as provided in this Article or otherwise disposed of. The owner of a self-service storage facility is a commercial landlord who rents space. While the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees.

...."

SECTION 3. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 625 A BILL TO BE ENTITLED AN ACT TO PROHIBIT DECEPTIVE ADVERTISING ABOUT GEOGRAPHICAL LOCATION BY BUSINESSES THAT SUPPLY PERISHABLE PRODUCTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 625:
No Deceptive Advertising/Business Location

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	**Date:**	May 27, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Drupti Chauhan*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 625 amends the law regarding deceptive representation about the geographical location of a business that supplies perishable products.***

CURRENT LAW: In the 2007 Session, Senate Bill 514 enacted G.S. 75-42 to prohibit a supplier of perishable products from misrepresenting the geographic location of the business in a telephone directory, a directory assistance database, or on the Internet. Misrepresentation under G.S. 75-42 occurs if the name of the business indicates that it is in geographical area and the business is not located in that area, the listing fails to identify the true location of the business, and the listing includes a telephone number that is routinely forwarded or transferred to a location outside the calling area in which the number is listed.

G.S. 75-42 also prohibits a supplier of perishable products from misrepresenting the geographic location of the business in printed advertising. A misrepresentation occurs if the advertisement includes a fictitious name or assumed name that misrepresents the supplier's geographic location and a telephone call to the number listed is routinely forwarded to a location outside the calling area.

It is not a violation of the current law if the listing or print advertisement provides conspicuous notice of the municipality and state in which the business is located and identifies this as the location of the business.

Media publishers, owner and operators of directories or ads, acting in good faith without knowledge of the deceptive advertising covered by this act, are immune from liability unless the directory or database service or advertiser is the same person as the person that has committed the acts prohibited under this act.

Violations of this statute are unfair and deceptive trade practices, subjecting the violator to treble damages.

BILL ANALYSIS: Senate Bill 625 amends G.S. 75-42, *Deceptive representation of geographical location in telephone directory, print advertisement, or on the Internet*, to provide that it is a misrepresentation if **"any other part"** of a telephone directory, directory assistance, Internet listing, or print advertisement for a supplier of perishable products incorrectly indicates that it is located in a geographical area and it is not located in that area. As passed in the 2007 Session, the statute only applied if the **"name of the business"** indicated that it was located in a geographical area and it was not. For a violation to occur under the current law, other statutory factors as discussed above must also apply.

EFFECTIVE DATE: Senate Bill 625 becomes effective October 1, 2009.

S625-SMRQ-90(e1) v2

**Tim Hovis, Counsel to Senate Commerce, significantly contributed to this summary.*

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SENATE BILL 625

Short Title:	No Deceptive Advertising/Business Location.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Commerce.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DECEPTIVE ADVERTISING ABOUT GEOGRAPHICAL LOCATION BY BUSINESSES THAT SUPPLY PERISHABLE PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-42 reads as rewritten:

"**§ 75-42. Deceptive representation of geographical location in telephone directory, print advertisement, or on the Internet.**

(a) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in the listing of the business in a telephone directory, other directory assistance database, or on the Internet. A person misrepresents the geographical location of the business under this subsection if the name of the ~~business~~ business, or any other part of the listing, indicates that the business is located in a geographical area and all of the following apply:

(1) The business is not located within the geographical area indicated.

(2) The listing fails to identify the municipality and state of the business's geographical location.

(3) A telephone call to the local telephone number listed in the telephone directory, directory assistance database, or on the Internet routinely is forwarded or transferred to a location that is outside the calling area covered by the telephone directory or directory assistance database in which the number is listed, or outside the local calling area for the local telephone number posted on the Internet.

(b) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in print advertisement. A person misrepresents the geographical location of the business under this subsection if a fictitious business ~~name or~~name, an assumed business ~~name~~ name, or any other part of the advertisement is listed in print advertisement and all of the following apply:

(1) The name or any other part of the advertisement misrepresents the geographic location of the supplier.

(2) A telephone call to the local telephone number listed on the print advertisement routinely is forwarded or transferred to a location that is outside the calling area in which the number is listed.

(c) A person who misrepresents the geographical location of the business under subsection (a) or subsection (b) of this section is not in violation of this section if a conspicuous notice in the listing or in the print advertisement states the municipality and state in which the business is located and identifies this as the location of the business.

(d) For purposes of this section, a newspaper publisher, magazine or other publication, telephone directory or directory assistance service, its officer or agent, the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to listing phone numbers or to advertising who publishes, broadcasts, or otherwise disseminates a directory, a database, or print advertisement in good faith without knowledge of its false, deceptive, or misleading character is immune from liability under this section unless the directory service, the database service, or the advertiser is the same person as the person, firm, or corporation that has committed the act prohibited by this section.

(e) A violation of this section is an unfair trade practice under G.S. 75-1.1."

SECTION 2. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

Committee Substitute for

SB 634 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR ENFORCEMENT, AND TO IMPOSE A PENALTY.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 634
PROPOSED HOUSE COMMITTEE SUBSTITUTE S634-PCS85236-RN-29

Short Title: Truth in Music Advertising Act. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR ENFORCEMENT, AND TO IMPOSE A PENALTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Truth in Music Advertising Act.

"**§ 75-125. Short title and definitions.**

(a) Short Title. – This Article may be cited as the Truth in Music Advertising Act.

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

(1) Performing group. – A vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(2) Recording group. – A vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) Sound recording. – A work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

"**§ 75-126. Production.**

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if any of the following apply:

(1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

(2) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, or the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(4) The advertising does not relate to a live musical performance or production taking place in this State.

(5) The performance or production is expressly authorized by the recording group.

"**§ 75-127. Restraining prohibited acts.**

(a) Injunction. – Whenever the Attorney General or a district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of G.S. 75-126 and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the State against the person to restrain by temporary or permanent injunction that practice.

(b) Payment of Costs and Restitution. – Whenever any court issues a permanent injunction to restrain and prevent violations of this Article as authorized in subsection (a) of this section, the court may in its discretion direct that the defendant restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this Article, under terms and conditions to be established by the court.

"**§ 75-128. Penalty.**

A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than five thousand dollars ($5,000) nor more than fifteen thousand dollars ($15,000) per violation, which civil penalty shall be in addition to any other relief which may be granted under G.S. 75-127. Each performance or production declared unlawful by G.S. 75-126 shall constitute a separate violation."

SECTION 2. This act becomes effective October 1, 2009, and applies to acts occurring on or after that date.

SENATE BILL 634:
Truth in Music Advertising Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	May 27, 2009
Introduced by:	Sen. Weinstein	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S634-CSRN-29		Committee Co-Counsel

SUMMARY: ***Senate Bill 634 would make it unlawful for any person to advertise or conduct a live music performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group in most circumstances. The Proposed Committee Substitute corrects the effective date.***

CURRENT LAW: G.S. 75-1.1 prohibits the unfair or deceptive acts or practices affecting commerce. A fine of $5,000 for each violation can be imposed upon individuals that violate the provisions of G.S. 75-1.1.

BILL ANALYSIS: Senate Bill 634 creates a new Article 6 in Chapter 75 of the General Statues entitled "Truth in Music Advertising." The bill does all of the following:

Creates the following important definitions:

- **Performing group**. – A vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.
- **Recording group.** – A vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

Provides that it is unlawful for any person to advertise or conduct a live music performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a **performing group** and a **recording group** unless any of the following apply:

1. The performing group is the authorized registrant and owner of a federal service mark for that group registered in the U.S. Patent and Trademark Office.
2. At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name.
3. The performance is identified in all advertising as a salute or tribute OR the performance is not so closely related as to confuse or mislead the public.
4. The advertising does not relate to a live musical performance in this State.
5. The performance is expressly authorized by the recording group.

The Attorney General or any district attorney may bring an action to restrain by temporary or permanent njunction an advertisement or production that violates this act. If the court orders a permanent njunction, it may also order individual in violation of the act to restore any money or property that has been obtained in conjunction with a violation of this act.

A person who violates this act is liable for a civil penalty of not less than $5,000, but no more than $15,000 per violation. Each performance is a separate violation.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to acts occurring on or after that date.

BACKGROUND: This bill is based on a model bill promoted by the Vocal Group Hall of Fame designed to stop the promotion of "imposter groups" that no have affiliation with the original group the imposters are purporting to be. The Vocal Group Hall of Fame states versions of this model bill have been adopted in 30 states. These statutes are relatively new.

Some legal commentators have questioned whether these state laws can narrow a federal trademark owner's rights. A U.S. District Court in New Jersey has addressed this issue in *Singer Management v. Milgram* (Apr. 9, 2009). In that case, Singer Management and Live Gold Operations (Plaintiffs) claimed to have exclusive rights to the unregistered marks of various music groups. Plaintiffs claimed that the Truth in Music Act conflicts with the federal Lanham Act which protects registered and unregistered trademarks equally. Plaintiffs also raised a number of constitutional objections related to takings, violations of free speech, and equal protection.

The Court rejected plaintiffs' constitutional challenges after the New Jersey Attorney General agreed that the exception for trademarks would also apply to common law trademarks. It noted that "the State again confirmed that it interprets and will apply . . . the Truth in Music Act to include common law trademarks rather than just registered marks, thereby providing equal protection to holders of registered trademarks and common law trademarks." "Because of the State's agreement on this point regarding the treatment of common law marks, this court found that the basic legal problems-equal protection, First Amendment and due process-were resolved."

S634-SMRN-78(CSRN-29) v2

Heather Fennell contributed to this summary.

SENATE BILL 634

Short Title:	Truth in Music Advertising Act.	(Public)
Sponsors:	Senator Weinstein.	
Referred to:	Commerce.	

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR ENFORCEMENT, AND TO IMPOSE A PENALTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Truth in Music Advertising.

"**§ 75-125. Short title and definitions.**

(a) Short title. – This Article may be cited as the Truth in Music Advertising Act.

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

(1) Performing group. – A vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(2) Recording group. – A vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) Sound recording. – A work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

"**§ 75-126. Production.**

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if any of the following apply:

(1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

(2) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, or the vocal or instrumental group

performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(4) The advertising does not relate to a live musical performance or production taking place in this State.

(5) The performance or production is expressly authorized by the recording group.

"**§ 75-127. Restraining prohibited acts.**

(a) Injunction. – Whenever the Attorney General or a district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of G.S. 75-126 and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the State against the person to restrain by temporary or permanent injunction that practice.

(b) Payment of Costs and Restitution. – Whenever any court issues a permanent injunction to restrain and prevent violations of this Article as authorized in subsection (a) of this section, the court may in its discretion direct that the defendant restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this Article, under terms and conditions to be established by the court.

"**§ 75-128. Penalty.**

A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than five thousand dollars ($5,000) nor more than fifteen thousand dollars ($15,000) per violation, which civil penalty shall be in addition to any other relief which may be granted under G.S. 75-127. Each performance or production declared unlawful by G.S. 75-126 shall constitute a separate violation."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 647 A BILL TO BE ENTITLED AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO CERTIFIED PUBLIC ACCOUNTANTS AND ALLOWING PUBLIC ACCOUNTANTS CERTIFIED OR LICENSED OUTSIDE THIS STATE TO PRACTICE IN THIS STATE UNDER CERTAIN CIRCUMSTANCES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 647:
Amend CPA Laws/Practice Privileges

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	May 27, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 647 amends the law relating to certified public accountants to allow a public accountant certified or licensed in another state to practice in this State under certain circumstances. It also provides that the rules of professional conduct adopted by the State Board of Certified Public Accountant Examiners (Board) apply to persons exercising the out-of-state practice privilege and that the Board has the authority to discipline persons exercising the out-of-state practice privilege.***

CURRENT LAW:

Under current law, an individual whose principal place of business is outside this State may be permitted to offer and perform certified public accountant services in the State, if the individual meet the following conditions:

- Holds a valid and unrevoked certificate as a CPA issued by another state, US territory or the District of Columbia.
- Holds a valid and unrevoked license or permit to practice as a CPA issued by another state, US territory or the District of Columbia and the jurisdiction's requirements are substantially equivalent to this State's requirements.
- Notifies the Board that the person intends to offer or perform services in this State.
- Agrees to comply with the law of this State and the rules adopted by the Board regarding notification and practice.
- Consents to have an administrative notice of hearing served on the licensing board in the individual's home state.
- Pays an annual fee not to exceed $50.00.

BILL ANALYSIS:

Senate Bill 647 amends the law related to persons certified in another state practicing in North Carolina. The bill creates an automatic practice privilege allowing an individual to perform services in person, by mail, telephone or electronic means, without notice to the Board or payment of the fee, if the individual:

- Holds a valid and unrevoked certificate as a CPA issued by another state, US territory or the District of Columbia.
- Holds a valid and unrevoked license or permit to practice as a CPA issued by another state, US territory or the District of Columbia.
- Has passed the Uniform CPA Examination.
- Has not been convicted of a felony and has not been convicted of a crime involving dishonesty, deceit, or fraud unless the licensing state has determined the conviction has no effect on the individual's license.

In order to exercise the practice privilege, the individual must consent to comply with the laws and rules of this State, to allow administrative notice of hearing to be served on the home licensing board, and to be subject to jurisdiction and disciplinary authority of the Board.

An out-of-state firm can also exercise the practice privilege and must consent to comply with the law and rules of this State and to be subject to the jurisdiction and disciplinary authority of the Board. The firm must also provide notice to the Board if an individual with the firm performs any of the following services for a client in this State:

- A financial statement audit or other engagement performed in accordance with the Statements on Auditing Standards.
- An examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements.
- An engagement performed in accordance with the Public Company Accounting Oversight Board auditing standards.

The bill also provides that the rules of professional conduct adopted by the Board apply to persons exercising the out-of-state practice privilege and that the Board can discipline persons exercising the out-of-state practice privilege in the same manner as currently provided for accountants certified in this State.

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

S647-SMRQ-84(e2) v1

**Karen Cochrane-Brown, Counsel to Senate Commerce, significantly contributed to this summary.*

SENATE BILL 647
Commerce Committee Substitute Adopted 4/22/09

Short Title: Amend CPA Laws/Practice Privileges. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO CERTIFIED PUBLIC ACCOUNTANTS AND ALLOWING PUBLIC ACCOUNTANTS CERTIFIED OR LICENSED OUTSIDE THIS STATE TO PRACTICE IN THIS STATE UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93-1(a)(3) reads as rewritten:

"(a) Definitions. – As used in this Chapter certain terms are defined as follows:

...

(3) A "certified public accountant" is a person who holds a certificate as a certified public accountant issued ~~to him~~ under the provisions of this Chapter.

...."

SECTION 2. G.S. 93-3 reads as rewritten:

"**§ 93-3. Unlawful use of title "certified public accountant" by individual.**

It shall be unlawful for any person who has not received a certificate of qualification or not been granted a practice privilege under G.S. 93-10 admitting ~~him~~ the person to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant."

SECTION 3. G.S. 93-4 reads as rewritten:

"**§ 93-4. Use of title by firm.**

It shall be unlawful for any firm, copartnership, or association to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the members of such firm, copartnership or association have been admitted to practice as certified public accountants, unless each of the members of such firm, copartnership or association first shall have received a certificate of qualification from the State Board of Certified Public Accountant Examiners or been granted a practice privilege admitting ~~him~~ each member of the firm, copartnership, or association to practice as a certified public accountant; provided, however, that the Board may exempt those persons who do not actually practice in or reside in the State of North Carolina from registering and receiving a certificate of qualifications under this section."

SECTION 4. G.S. 93-10 reads as rewritten:

"**§ 93-10. ~~Persons certified in other states.~~Practice privileges.**

(a) An individual whose principal place of business is outside this State ~~may be~~is granted the privilege to perform or offer to perform ~~services~~ services, whether in person or by mail, telephone, or electronic means, in this State as a certified public accountant without

notice to the Board, the submission of any other documentation, or the payment of any fee if the individual meets all of the following conditions:

(1) Holds a valid and unrevoked certificate as a certified public accountant, or its equivalent, issued by another state, a territory of the United States, or the District of Columbia.

(2) Holds a valid and unrevoked license or permit to practice as a certified public accountant issued by another state, a territory of the United States, or the District of ~~Columbia and that jurisdiction's requirements for licensure are substantially equivalent to the requirements of this Chapter.~~Columbia.

(3) ~~Notifies the State Board of Certified Public Accountant Examiners that the person intends to perform or offers to perform services in this State as a certified public accountant.~~Has passed The Uniform CPA Examination.

(4) ~~Agrees to comply with the provisions of this Chapter and the rules adopted by the Board regarding notification and practice.~~Has not been convicted of a felony under the laws of the United States, any state, a territory of the United States, or the District of Columbia and has never been convicted of a crime, an essential element of which is dishonesty, deceit, or fraud unless the jurisdiction in which the individual is licensed has determined the felony or other crime has no effect on the individual's license.

~~(5) Have an administrative notice of hearing served on the licensing board in the individual's principal state of business, notwithstanding the individual notice requirements of G.S. 150B-38.~~

~~(6) Pays an annual fee not to exceed fifty dollars ($50.00).~~

(b) An individual who satisfies the requirements of subsection (a) of this section and exercises the privilege afforded under this section by performing or offering to perform services as a certified public accountant in this State simultaneously consents as a condition of the grant of this privilege to:

(1) Comply with the laws of this State, the provisions of this Chapter, and rules adopted by the Board.

(2) Have an administrative notice of hearing served on the licensing board in the individual's principal state of business, notwithstanding the individual notice requirements of G.S. 150B-38.

(3) Be subject to personal jurisdiction, subject matter jurisdiction, and disciplinary authority of the Board.

(c) A firm whose principal place of business is outside this State and has no office in this State is granted the privilege to perform or offer to perform services, whether in person or by mail, telephone, or electronic means, in this State as a firm. A firm that exercises the privilege afforded under this section simultaneously consents as a condition of the grant of the privilege to:

(1) Comply with the laws of this State, the provisions of this Chapter, and rules adopted by the Board.

(2) Be subject to personal jurisdiction, subject matter jurisdiction, and disciplinary authority of the Board.

(3) Provide notice without a fee to the Board if any individual with the firm who has been granted privileges in North Carolina to practice as a certified public accountant performs any of the following services for a client in this State:

a. A financial statement audit or other engagement performed in accordance with the Statements on Auditing Standards.

b. An examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements.

c. An engagement performed in accordance with the Public Company Accounting Oversight Board auditing standards."

SECTION 5. G.S. 93-12(9) reads as rewritten:

"(9) Adoption of Rules of Professional Conduct; Disciplinary Action. – The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this ~~State.~~State and persons exercising the practice privilege authorized by this Chapter. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or any practice privilege authorized by the provisions of this Chapter or to censure the holder of any such certificate or person exercising the practice privilege authorized by this Chapter. The Board also shall have the power to assess a civil penalty not to exceed one thousand dollars ($1,000) for any one or combination of the following causes:

a. Conviction of a felony under the laws of the United States or of any state of the United States.

b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.

c. Fraud or deceit in obtaining a certificate as a certified public accountant.

d. Dishonesty, fraud or gross negligence in the public practice of accountancy.

e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 652 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE RETAIL SALE AND DISTRIBUTION OF NOVELTY LIGHTERS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 652
Commerce Committee Substitute Adopted 4/15/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S652-PCS85237-RO-51

Short Title: Prohibit Sale of Novelty Lighters. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RETAIL SALE AND DISTRIBUTION OF NOVELTY LIGHTERS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 2 of Chapter 66 of the General Statutes reads as rewritten:

"Article 2.

Manufacture and Sale of ~~Matches.~~Matches and Lighters."

SECTION 2. G.S. 66-16 reads as rewritten:

"**§ 66-16. Violation of Article a misdemeanor.**

Any person, association, or corporation violating any of the provisions of this ~~Article~~ Article, other than G.S. 66-16.1, shall be guilty of a Class 3 misdemeanor and shall only be fined for the first offense not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00), and for each subsequent violation not less than twenty-five dollars ($25.00)."

SECTION 3. Article 2 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-16.1. Retail sale of novelty lighters prohibited.**

(a) Definition. – As used in this section, the term 'novelty lighter' means a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes, that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes. A novelty lighter may operate on any fuel, including butane, isobutene, or liquid fuel.

(b) Prohibition. – It shall be unlawful to sell at retail, offer to sell at retail, or give, or distribute for retail sale or promotion, a novelty lighter in this State. This prohibition does not apply to the transportation of novelty lighters through this State or to the storage of novelty lighters in a warehouse or distribution center in this State that is closed to the public for purposes of retail sales.

(c) Exceptions. – The prohibition in this section does not apply to any of the following:

(1) A lighter manufactured prior to January 1, 1980.

(2) Any mechanical or electrical device primarily used to ignite fuel for fireplaces or charcoal or gas grills.

(3) Standard disposable or refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves, but which do not otherwise resemble a novelty lighter.

(d) Civil Penalty. – Any person who violates the prohibition in subsection (b) of this section shall be subject to a civil penalty of five hundred dollars ($500.00) for each violation. A civil penalty owed under this section may be imposed in a civil action brought by the Attorney General or the district attorney of the appropriate prosecutorial district as defined in G.S. 7A-60. The clear proceeds of any civil penalties imposed in any action initiated under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. During the first year after the effective date of this act, any person who receives a citation for a first violation of G.S. 66-16.1 as enacted by Section 3 of this act shall not be subject to the penalty imposed by that section, provided the person immediately removes the novelty lighter from being offered for sale or distribution and remains otherwise in compliance with the act.

SECTION 5. This act becomes effective October 1, 2009, and applies to products purchased on or after that date.

North Carolina General Assembly
SENATOR AUSTIN M. ALLRAN

F.Y.I.
Austin

HANDOUT #1

WGHP

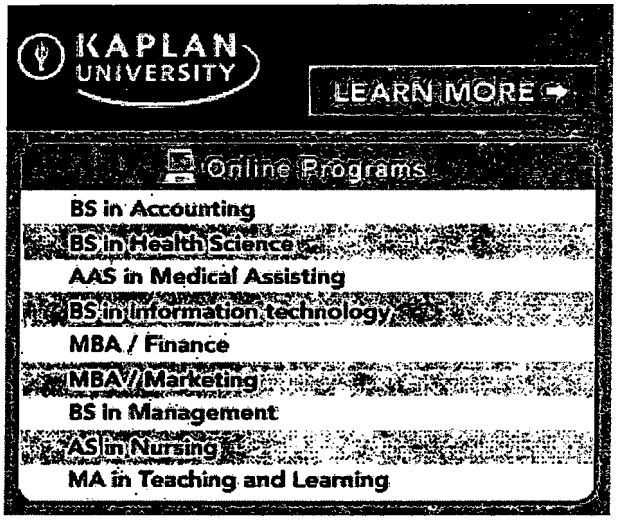
Arson Reported at Jamestown Dollar General Store

By Roxanna Haynes

FOX8 News

April 16, 2009

JAMESTOWN, N.C.



Investigators said a fire at the Dollar General store at 715 W. Main St. in Jamestown Thursday evening was intentionally set.

Guilford County firefighters got the call around 7:35 p.m. Authorities said some merchandise inside the store had been set on fire, but employees were able to put the fire out.

Minimal damage to the store was reported.

After further investigation, fire officials determined a child playing with a novelty lighter started the fire.

"These lighters really pose two problems to us," said Alan Perdue, emergency services director. "One, kids playing with them and setting fires. The second is many of them contain a high concentration of lead which is a health concern to people as well."

The state Senate wants cigarette lighters shaped like cell phones, cartoon characters and toy rifles to be snuffed out in North Carolina.

Senators voted overwhelmingly Thursday to ban the retail sale and distribution of novelty lighters.

A state task force looking to reduce child deaths supports the change.

Task force chairman Tom Vitaglione says four states have banned such lighter sales and 16 other states are considering bans.

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SENATE BILL 652:
Prohibit Sale of Novelty Lighters

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	May 26, 2009
Introduced by:	Sen. Allran	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 652 would prohibit the retail sale or distribution for retail sale of "novelty lighters" and impose a civil penalty of $500 per violation.

CURRENT LAW: Current law does not regulate the sale of lighters.

BILL ANALYSIS: Senate Bill 652 would prohibit the retail sale, offer to sell or distribution for retail sale of novelty lighters. A novelty lighter is defined as a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes, that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes. A novelty lighter may operate on any fuel, including butane, isobutene, or liquid fuel. The prohibition would not apply to transporting novelty lighters through the State or storing novelty lighters in a warehouse or distribution center in this State that is closed to the public for the purpose of retail sale.

The bill excludes lighters manufactured prior to January 1, 1980; lighters that are incapable of being fueled or lacking a device necessary to produce combustion or a flame; mechanical or electrical devices primarily used to ignite fuel for fireplaces, or charcoal or gas grills; and standard disposable or refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves, but which do not otherwise resemble a novelty lighter.

A person who violates the prohibition could be subject to a civil penalty of five hundred dollars ($500.00) for each violation. The action could be brought by the Attorney General or the district attorney of the appropriate prosecutorial district. The clear proceeds of any penalty would be remitted to the Civil Penalty and Forfeiture Fund. The bill expressly exempts violations from any criminal offense.

EFFECTIVE DATE: The act becomes effective October 1, 2009 and applies to products purchased on or after that date.

BACKGROUND: The National Association of State Fire Marshalls has adopted a model act banning the sale of novelty lighters. A number of states (Maine, California, Arkansas and Washington) have passed laws prohibiting the sale of novelty lighters and others are considering similar legislation.

Kory Goldsmith, counsel to Senate Commerce, substantially contributed to this summary.

S652-SMRO-106(e2) v1

SENATE BILL 652
Commerce Committee Substitute Adopted 4/15/09

Short Title: Prohibit Sale of Novelty Lighters. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RETAIL SALE AND DISTRIBUTION OF NOVELTY LIGHTERS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 2 of Chapter 66 of the General Statutes reads as rewritten:

"Article 2.

Manufacture and Sale of ~~Matches.~~Matches and Lighters."

SECTION 2. G.S. 66-16 reads as rewritten:

"**§ 66-16. Violation of Article a misdemeanor.**

Any person, association, or corporation violating any of the provisions of this ~~Article~~ Article, other than G.S. 66-16.1, shall be guilty of a Class 3 misdemeanor and shall only be fined for the first offense not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00), and for each subsequent violation not less than twenty-five dollars ($25.00)."

SECTION 3. Article 2 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-16.1. Retail sale of novelty lighters prohibited.**

(a) Definition. – As used in this section, the term 'novelty lighter' means a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes, that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes. A novelty lighter may operate on any fuel, including butane, isobutene, or liquid fuel.

(b) Prohibition. – It shall be unlawful to sell at retail, offer to sell at retail, or give, or distribute for retail sale or promotion, a novelty lighter in this State. This prohibition does not apply to the transportation of novelty lighters through this State or to the storage of novelty lighters in a warehouse or distribution center in this State that is closed to the public for purposes of retail sales.

(c) Exceptions. – The prohibition in this section does not apply to any of the following:

(1) A lighter manufactured prior to January 1, 1980.

(2) Any mechanical or electrical device primarily used to ignite fuel for fireplaces or charcoal or gas grills.

(3) Standard disposable or refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves, but which do not otherwise resemble a novelty lighter.

(d) Civil Penalty. – Any person who violates the prohibition in subsection (b) of this section shall be subject to a civil penalty of five hundred dollars ($500.00) for each violation. A civil penalty owed under this section may be imposed in a civil action brought by the Attorney

General or the district attorney of the appropriate prosecutorial district as defined in G.S. 7A-60. The clear proceeds of any civil penalties imposed in any action initiated under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. This act becomes effective October 1, 2009, and applies to products purchased on or after that date.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 3, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 852	Defer Tax on Builders' Inventory.	Representative Dickson Representative Brubaker Representative Holliman Representative Wainwright
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1598	Small Business Incentives Study.	Representative Kelly M. Alexander, Jr. Representative Mackey Representative Faison
SB 332	Zoo and Zoo Funds Modifications.	Senator Brunstetter
SB 412	Modify NC Limited Liability Company Act.	Senator Brunstetter
SB 709	Home Improvement Fraud.	Senator Allran
SB 1006	Withholding on Contractors Identified by ITIN.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:15 a.m. on **June 02, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, June 3, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 852	Defer Tax on Builders' Inventory	Representative Dickson Representative Brubaker Representative Holliman Representative Wainwright
HB 1151	Res. Lead-Based Paint Hazards/Renovations	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1598	Small Business Incentives Study	Representative Kelly Alexander, Jr. Representative Mackey Representative Faison
SB 332	Zoo and Zoo Funds Modifications	Senator Brunstetter
SB 412	Modify NC Limited Liability Company Act	Senator Brunstetter
SB 709	Home Improvement Fraud	Senator Allran
SB 1006	Withholding on Contractors By ITIN	Senator Hoyle

ADJOURNMENT

NOTE:

SB 412 **MODIFY NC LIMITED LIABILITY COMPANY ACT**
Sponsor: Senator Brunstetter
Will be heard June 10, 2009

SB 709 **HOME IMPROVEMENT FRAUD**
Sponsor: Senator Allran
Will be heard June 10, 2009

SB 1006 **WITHHOLDING ON CONTRACTORS BY ITIN**
Sponsor: Senator Hoyle
Will be heard at a later date

MINUTES

HOUSE COMMITTEE ON COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP

Wednesday, June 3, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business, and Entrepreneurship met on Wednesday, June 3, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Margaret H. Dickson, Chair, Representatives Goforth, Starnes, Stewart, Vice Chairs; Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, Farmer-Butterfield, Floyd, Frye, Harrell, Holloway, McGee, Mills, Pierce, Samuelson, Steen, Tarleton, Warren, and Wray. Staff Counsel present: Karen Cochrane-Brown, Drupti Chauhan, Brad Krehely. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order and recognized the Committee Assistant, Staff, Pages, Sergeants-at-Arms and visitors.

The following bills were considered:

HB 1598 – A BILL TO BE ENTITLED AN ACT CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON SMALL BUSINESS INCENTIVES FOR JOB PRESERVATION AND GROWTH. Sponsors: Representatives Kelly Alexander, Jr., Mackey, and Faison. Representative Alexander presented the bill. Representative Blackwood moved for a favorable report and recommendation that the bill be re-referred to the Committee on Rules, Calendar, and Operations of the House. The motion passed.

HB 852 – AN ACT TO DEFER THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER. Sponsors: Representatives Dickson, Brubaker, Holliman, Wainwright. Chair Dickson asked Vice Chair Starnes to preside. A proposed committee substitute was placed before the Committee. Representative Boles moved to adopt the proposed committee substitute, and it was adopted. Chair Dickson explained that the bill comes in response to the current economic crisis in our state and nation. For homebuilders, their inventory is unsold houses. The General Assembly abolished the inventory tax on all other inventories a number of years ago, but the homebuilders continue to pay property tax to the counties on their inventory. This bill does not eliminate the property tax. It defers the payment of the property tax until the property is sold. Chair Dickson has been in contact with County Commissioners Association, League of Municipalities, and Homebuilders Association. They are all in favor of the bill. Dan Ettefagh, Research Analyst explained the bill. Pat Goddard, Director, Johnston County Tax Collectors Office was recognized to speak on the bill. Her

concerns were with the July 1, 2009 effective date. Johnston County already has their budget for this year. This would mean loss to the county. Lisa Martin, representing NC Home Builders wants the bill passed. Paul Myers, representing League of Municipalities wants the bill passed. Representative Floyd requested the bill be delayed until the next meeting. Representative Tarleton moved for a favorable report to House proposed committee substitute on HB 852, with a re-referral to Committee on Finance. The motion passed.

HB 1151 – A BILL TO BE ENTITLED AN ACT TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES. Sponsors: Representatives Farmer-Butterfield, Earle, England, Rapp. Representative Samuelson moved to adopt the proposed committee substitute placed before the Committee. The proposed committee substitute was adopted. Representative Farmer-Butterfield explained the bill. Chair Dickson recognized members of the Committee for questions as follows:

Representative Avila was under the impression this had been handled by U. S. EPA. Representative Farmer-Butterfield said these are required by the U. S. Environmental Protection Agency of different states, and North Carolina is one of those states. North Carolina is getting in place (if the bill is approved) so that we are in compliance with federal regulations. Karen Cochrane-Brown said this is a bill that would allow states to administer program mandates by the EPA if the states have not enacted appropriation, the EPA will take over. Representative Avila asked what the current status is. Mary Giguere, CIH, Manager, NC Department of Health and Human Services, Division of Public Health said that EPA asked them to look at lead-based paint and work done in homes with lead-based paint. The first part of the regulation that came out was to deal with lead-based paint. That is the program that North Carolina determined they wanted to adopt, and NCDHHS is authorized by EPA to do the work in the state. Additionally, EPA said they needed to be looking at renovations to enhance that program.

Representative Starnes asked staff how broad or how narrow the bill is. On page 2, line 45 (a) No firm shall perform, offer, or claim to perform renovation activities unless the firm is a certified renovation firm. He asked if this applied to a residential dwelling. For instance, if a person wanted to remodel a kitchen and had old paint in there, and the contractor wanted to scrape paint and paint over it. Ms. Cochrane-Brown understands is this will apply to housing and child-occupied facilities. Both of them apply to buildings that were built before 1978. She also understands that it is not the property owner that has the obligation; renovators have to know that they have to be certified to do this and they cannot perform the work. Representative Starnes asked about buildings built before 1978 having lead-based paint in them and asked how broad this is. If he bought a house built in and the roof leaked, sheetrock fell and the ceiling needed to be replaced, does the person doing the work have to have this certification come in and do that renovation. Ms. Giguere said, yes. That is the way the federal regulation is written. Representative

Starnes said he felt the regulation is too broad. He feels many repairs/renovations have nothing to do with the danger of lead-based paint. It might be patching sheetrock, installing carpet or floor covering where there is no paint to be disturbed. If that is correct, the person doing the work did not have this lead-based paint certification, that person would be guilty of this law and subject to $1,000 fine. Ms. Giguere said that the federal EPA regulation says that if you disturb more than 6 square feet of a lead-based paint surface, you will be required to be certified to do the work. Some types of renovations may not fall under this regulation. It is the EPA that set that language that broadly. That is the language that has to be incorporated in this program. Representative Starnes asked how many renovators in our state have this license and is there any in Caldwell County. Ms. Cochrane-Brown said there are not any now; however, there is no requirement now either.

Representative Goforth asked what the qualifications are to be recertified. Ms. Giguere said the requirement to become a certified renovator is a one-day training course. Representative Farmer-Butterfield said that the Division of Public Health would make that decision. Lisa Martin, NC Homebuilders, said they have concerns with the duplication of effort with the General Contractors licenses. She wants to work it out what is supposed to be enforced by them. The other concern was how broad it was that not every structure built before 1978 would have lead-based paint in it. They do have concerns over the general contractors' aspect of the bill and what is required. Representative Farmer-Butterfield reminded the Committee that the bill would have to go to Finance and said that something could be worked out before then.

Representative Blackwood referred to page 3, line 48 (a $2,000 fee). What are the applicants paying $2,000 for? What justifies charging $2,000. Representative Farmer-Butterfield said that it is the annual certification accreditation fee. Representative Blackwood said the fee is exorbitant. He asked the bill sponsor if she would be open to an amendment on the amount of fees. Ms. Giguere said the fee under discussion for accreditation is to be paid by trained providers offering training to multiple people. It is comparable to the fee in the existing statute relating to paint abatement and is comparable to other states in the southeast. Representative Blackwood asked Representative Farmer-Butterfield what impact would this have on the price of housing. In many areas, particularly in the northeastern part of the state, many houses have been there for a long time. He would be skeptical of buying anything built before 1978. Representative Farmer-Butterfield's concern is if there are children involved (whether they are in private homes, day care centers, etc.). She does not want to see people brain damaged or suffer mental retardation under those conditions. In terms of total impact of the housing market, she was uncertain of the impact.

Representative Boles asked if currently a general contractor could remove the lead-based paint. Representative Goforth said they can because there is no certification requirement. His concern is not only would people be driven away from business by this large amount of fee. Representative Boles said that as a general contractor's license, this could not be done. Representative Goforth said that his understanding of this bill, this could not be done unless certified in lead-based paint removal. Representative Boles said that a

general contractor's license would not be required to remove paint if a certified lead-based paint remover. You could have an independent business. Ms. Giguere pointed out that general contractors are required to be certified to eliminate lead-based paint. Representative Starnes asked if this would be taught through a community college or private school and how long it would take to be certified. Ms. Giguere said that NCDHHS has already started working with community colleges in developing training. When training is enacted, EPA will come in and regulate.

Representative Samuelson asked on the federal regulation that we are trying to match, do they specify the 6 square foot limitations. Ms. Giguere said yes they do. Representative Samuelson referred to page 4, Section 2 where the fee is added. Is that required by federal legislation to add $1,000 fee. Ms. Giguere said that it is a fee and they are required to have enforcement capabilities. Representative Samuelson asked if we are required for that by the federal program or are we required because we have to. Ms. Giguere said it is required by the federal program, and NCDHHS already has it in place for the abatement program.

Representative Blackwell referred to page 2, Purpose. Since we are doing this because in lieu of it, the federal program would apply. What is the difference in federal program that would apply and what we are doing here. Ms. Giguere said it would become a state administered program instead of a program administered by EPA. Representative Blackwell asked if this legislation here applies the same requirement. Why is it in our interest as a state not to let them do it? Ms. Giguere said that as a general rule, NCDHHS found that they prefer to be able to work with people in this state rather than the federal government. Representative Blackwell asked what is the date by which we have to have this in place in order to avoid the federal government doing it for us. Ms. Giguere said the federal government at this point, April 22, 2009 is when the federal government starts enforcing legislation in this state. The major portion of the regulation does not go into effect until April 22, 2010. Representative Blackwell referred to page 2, line 18 defining target housing. The last sentence says, "Target housing includes any housing contained in 40 C.F.R. 745.223. Is that cited section limited to housing constructed prior to 1978 or does it include something after 1978. Ms. Giguere said that it is prior to 1978. Representative Blackwell asked what is included under that which is not included under the first sentence. Ms. Giguere said there is nothing different. Representative Blackwell asked if whether or no the second sentence added anything. His concern as an attorney is that it forces someone trying to understand the federal code to determine it saying the same thing that has already been said in the sentence that precedes it. Karen Cochrane-Brown noted that the definition came largely from the federal regulation. It deals with a zero bedroom dwelling. She was unsure of what that meant. Representative Blackwell was concerned that we are including it and someone who is trying to apply this would have to figure it out.

Representative Farmer-Butterfield welcomed amendments for those who had concerns or if the bill should be displaced for a later meeting. Chair Dickson moved that this bill be displaced until the next committee meeting scheduled June 10, 2009.

SB 332 – A BILL TO BE ENTITLED AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS ACT; TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE AND TO ANNEX CERTAIN PROPERTY OWNED BY THE NC ZOOLOGICAL SOCIETY INTO THE CITY OF ASHEBORO. Sponsor: Senator Brunstetter

Senator Brunstetter presented the bill and explained that this legislation alters the purchase and contract authority of the Zoo to include the best value procurement and government/vendor partnerships. It exempts the Zoo from the Umstead Act in order to allow more public/private partnerships and it directs DNER to continue to work with the Zoo to identify other issues of concern including reviewing the memorandum of agreement between DENR and the Zoo Society. It then authorizes continuation of this committee for 2010. There is no opposition to the bill.

Discussion followed. Representative Edith Warren moved for a favorable report. The motion passed.

The meeting adjourned.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 3, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Crawford	CCNC
Bill Wilkes	NC DOR
Michael Brown	NC DOR
Devon A. Barnes	Rep. Alma Adams
Sara Nienow	NCDOC
David Baum	K+L GATES
Cady Thomas	NC Assn of Realtors
Alan Woodard	NC Dept. of Revenue
Joe Cashion	WS Chamber
Kathy Hill	NC Zoo Society
Dan Crawford	NCBA
Daniel Auburn	Electric Cities

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 3, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Seth Palmer	Rep Hollman
Dan Conrad	NCCN
Katrina English	NCCN
Scott Mason	Lowe's
Alexandra Embry	DENR
Elizabeth Biser	DENR
Danny Linebark	DHHS
Donald Chaney	NC DHHS
Lisa Martin	NC Home Builders
Frank Wiesner	Olde South Homes
Jessi Hays	NC HBA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 3, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gregg Thompson	NFIB
NICK TENNYSON	NFIB
Heather Barnett	Hunton & Williams
Rita Harris	Commerce Dept.
Joey Peters	
Kevin Leonard	NCACC
Preston Howard	MCIC
Paul Pulley	NCAFT

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 3, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Paul Meyer	NCLM
Pat Stoddard	Johnston County Assess / NC Associa Assessing Officers
Jack Gsort	Womble
Ed Sinclair	Brooks Pierce

COMMERCE, SM. BUS. & ENTREPRENEURSHIP

House Pages

Name of Committee: _____ **Date:** JUNE 3, 2009

1. Name: Walt Whitehead
   County: Wake
   Sponsor: Rep. Tarleton
2. Name: Robert Daniel
   County: Wilson
   Sponsor: Rep Yongue
3. Name: Amanda Farquharson
   County: Johnston
   Sponsor: Leo Daughtry
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: FRANK PREVO
3. Name: MARTHA GADISON

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1598 A BILL TO BE ENTITLED AN ACT CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON SMALL BUSINESS INCENTIVES FOR JOB PRESERVATION AND GROWTH.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1598:
Small Business Incentives Study

2009-2010 General Assembly

Committee:	Commerce, Small Business, and Entrepreneurship, if favorable, Rules, Calendar, and Operations of the House	**Date:**	June 3, 2009
Introduced by:	Reps. K. Alexander, Mackey, Faison	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1598 would create the Joint Legislative Study Committee on Small Business Incentives for Job Preservation and Growth.

BILL ANALYSIS:

The bill proposes the creation of the Joint Legislative Study Committee on Small Business Incentives for Job Preservation and Growth, to consist of 15 members appointed as follows:

- 6 members appointed by the Speaker of the House.
- 6 members appointed by the President Pro Tempore of the Senate.
- 1 member appointed by the Director of the Rural Economic Development Center.
- 1 member appointed by the Director of the NC Institute for Minority Economic Development.
- 1 member appointed by the Secretary of Commerce.

The Committee would be charged with studying the feasibility of the following programs:

- Providing low-interest loans for specific purposes to be made available to small businesses with gross receipts between $1,500,000 and $2,000,000.
- Providing funds for capital grants and low-interest loans for small businesses with gross receipts between $500,000 and $1,500,000.
- Providing microloans and microgrants to small businesses with gross receipts of less than $500,000 for any legitimate business purpose.
- Any other issue the committee deems relevant.

The Committee must submit a final report to the 2011 General Assembly and may submit an interim report. The Committee terminates upon filing of the report or the convening of the 2011 General Assembly whichever comes first.

The bill appropriates $15,000 for the 2009-2010 fiscal year to conduct the study.

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

H1598-SMRO-118(e1) v1

HOUSE BILL 1598

Short Title:	Small Business Incentives Study.	(Public)
Sponsors:	Representatives K. Alexander, Mackey, Faison (Primary Sponsors); Cotham, Farmer-Butterfield, Hughes, Jones, Pierce, Sutton, Tarleton, Wilkins, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Rules, Calendar, and Operations of the House.	

May 6, 2009

A BILL TO BE ENTITLED

AN ACT CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON SMALL BUSINESS INCENTIVES FOR JOB PRESERVATION AND GROWTH.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the Joint Legislative Study Committee on Small Business Incentives for Job Preservation and Growth. The Committee shall consist of 15 members, appointed as follows:

(1) Six members appointed by the Speaker of the House of Representatives.
(2) Six members appointed by the President Pro Tempore of the Senate.
(3) One member appointed by the Director of the Rural Economic Development Center, Inc.
(4) One member appointed by the Director of the N.C. Institute for Minority Economic Development, Inc.
(5) One member appointed by the Secretary of the Department of Commerce.

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. Vacancies on the Committee shall be filled by the same appointing authority that made the initial appointment. The Committee shall meet on the call of its House and Senate cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 2. The Committee shall examine the following issues:

(1) The feasibility of programs for small businesses with annual gross receipts of one million five hundred thousand dollars ($1,500,000) or more and less than two million dollars ($2,000,000) that would provide low-interest loans for any of the following purposes:
   a. Purchasing real or business property used to maintain or expand workforce.
   b. Improving real property, whether owned or leased, to make it more energy efficient.
   c. Acquiring broadband connectivity and technology to improve efficiency of business operations.
(2) The feasibility of programs for small business with annual gross receipts of five hundred thousand dollars ($500,000) or more and less than one million five hundred thousand dollars ($1,500,000) that would provide funds for any of the following purposes:
   a. Providing working capital grants.

b. Providing low-interest construction loans for the purchase of real or business property used to maintain or expand the workforce.
c. Improving real property, whether owned or leased, to make it more energy efficient.
d. Acquiring broadband connectivity and technology to improve the efficiency of business operations.
e. Any other legitimate business purpose designed to improve business efficiency.

(3) The feasibility of microloans and microgrants to small businesses with annual gross receipts of less than five hundred thousand dollars ($500,000) for any legitimate business purpose.

(4) Any other issue the Committee deems relevant.

SECTION 3. While in the discharge of its official duties, the Committee may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Committee may meet in the Legislative Building or Legislative Office Building and may meet at various locations around the State in order to promote greater public participation in its deliberations.

SECTION 4. The Committee shall submit a final report to the 2011 General Assembly and may submit interim reports as it deems necessary. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever comes first.

SECTION 5. There is appropriated from the General Fund to the General Assembly the sum of fifteen thousand dollars ($15,000) for the 2009-2010 fiscal year to conduct the study required by this act.

SECTION 6. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for ,
HB 852 A BILL TO BE ENTITLED AN ACT TO DEFER THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 852
PROPOSED COMMITTEE SUBSTITUTE H852-PCS10994-MCx-15

Short Title: Defer Tax on Builders' Inventory. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFER THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273 is amended by adding a new subdivision to read:

"(3a) "Builder" means a taxpayer licensed as a general contractor under G.S. 87-1 and engaged in the business of buying real property, making improvements to it, and then reselling it."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1D. Inventory property tax deferral.**

(a) Classification. – A residence owned and constructed by a builder is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement, other than remodeling, rehabilitating, or refinishing, by a builder to real property that is intended to be sold and used as an individual's residence, that is unoccupied, and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – A builder may defer the portion of tax imposed on real property that represents the increase in value of the property attributable solely to improvements resulting from the construction by the builder of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earliest of (i) when the builder transfers the residence, (ii) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (iii) five years from the time the improved property was first subject to being listed for taxation by the builder, or (iv) three years from the time the improved property first received the property tax benefit provided by this section. On or before September 1 of each year, the collector shall notify each builder to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the builder subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the builder from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and 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. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 3. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(2a) G.S. 105-277.1D, the inventory property tax deferral."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Notwithstanding G.S. 105-277.1D(e), an application filed within 60 days of the effective date of this act shall be accepted by the county tax assessor as timely filed. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2012. Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 852
PROPOSED COMMITTEE SUBSTITUTE H852-CSMCx-15 [v.3]

6/2/2009 7:19:08 PM

Short Title: Defer Tax on Builders' Inventory. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFER THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273 is amended by adding a new subdivision to read:

"(3a) "Builder" means a taxpayer licensed as a general contractor under G.S. 87-1 and engaged in the business of buying real property, making improvements to it, and then reselling it."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1D. Inventory property tax deferral.**

(a) Classification. – A residence owned and constructed by a builder is designated a special class of property under Section 2(2) Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement, other than remodeling, rehabilitating, or refinishing, by a builder to real property which is intended to be sold and used as an individual's residence, which is unoccupied, and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – A builder may defer the portion of tax imposed on real property that represents the increase in value of the property attributable solely to improvements resulting from the construction by the builder of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earliest of (i) when the builder transfers the residence, (ii) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (iii) five years from the time the improved property was first subject to being listed for taxation by the builder or (iv) three years from the time the improved property first received the property tax benefit provided by this section. On or before September 1 of each year, the collector shall notify each builder to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the builder subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the builder from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and 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. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 3. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(2a) G.S. 105-277.1D, the inventory property tax deferral."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Notwithstanding G.S. 105-277.1D(e), an application filed within sixty (60) days of the effective date of this act shall be accepted by the county tax assessor as timely filed. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2012. Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.

HOUSE BILL 852:
Defer Tax on Builders' Inventory

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 3, 2009
Introduced by:	Reps. Dickson, Brubaker, Holliman, Wainwright	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	PCS to First Edition H852-CSMCx-15		

SUMMARY: ***This act would create a property tax deferral program to defer for a maximum of three years the portion of taxes on an unoccupied, unsold residence attributable to the construction of the residence on unimproved real property by a builder.***

CURRENT LAW: North Carolina currently has six property tax deferral programs: (i) historic district property held as future site of historic structures[1], (ii) the circuit breaker tax deferral program[2], (iii) nonprofit property held as future site of low- or moderate-income housing[3], (iv) present-use value (PUV) property[4], (v) working waterfront property[5], and (vi) historic property.[6] Uniform tax provisions for all deferral programs include the following:

- Taxes that are deferred under one of these programs become a lien on the property, which is extinguished when the taxes are paid.
- The deferred taxes are due and payable on the day the property loses its eligibility for deferral as a result of a disqualifying event.
- Interest accrues during the deferral period as of the date the taxes would have originally become due without the deferral program.
- Upon disqualification, the tax for a year in which a disqualifying event occurs is computed without the benefit of the deferral program.

BILL ANALYSIS: This bill would add an additional property tax deferral program for an occupant-ready residence constructed and owned by a general contractor for resale on a parcel of real property that does not already have a house built thereon. The amount of property tax liability that could be deferred would be the portion of tax that represents the increase in the property value resulting from the construction of the residence on the property. For example, if the land value of unimproved real estate was $100,000, and the value of the property, as improved by the construction of a residence, was $400,000, the builder would be required to pay the property tax on the land value ($100,000) but could defer the property tax liability for the value of the improvement ($300,000).

The deferred taxes could be carried forward in the records of the county and, if applicable, city in which the property is located until the occurrence of one of the following three disqualifying events: (1) the builder transfers the residence; (2) the residence is occupied by the builder or another with the builder's consent; (3) five years from the time the improved property was first subject to being listed for taxation

[1] G.S. 105-275(29a).
[2] G.S. 105-277.1B.
[3] G.S. 105-278.6(e).
[4] G.S. 105.277.4(c).
[5] G.S. 105-277.14.
[6] G.S. 105-278(b).

by the builder, or (4) three years from the date the improved property first received the property tax benefit provided by this deferral program. The uniform provisions for deferral programs would apply to this inventory tax deferral program.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009, and is repealed for taxes imposed for taxable years beginning on or after July 1, 2012. Applications should be filed within the regular listing period and may be filed later if the board of equalization and review determines there is good cause for the lack of timely filing. For the 2009-2010 tax year only, the tax assessor must accept an application as timely filed if it is filed within 60 days of the effective date of this act.

H852-SMMC-1(CSMCx-15) v1

HOUSE BILL 852

Short Title:	Defer Tax on Builders' Inventory.	(Public)
Sponsors:	Representatives Dickson, Brubaker, Holliman, Wainwright (Primary Sponsors); Coates, Dockham, Dollar, Howard, Lucas, Martin, Moore, Neumann, Pierce, Ross, Spear, and Steen.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFER THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273 is amended by adding a new subdivision to read:

"(3a) "Builder" means a taxpayer engaged in the business of buying real property, making improvements to it, and then reselling it."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1D. Inventory property tax deferral.**

(a) Classification. – A residence owned by a builder is designated a special class of property under Section 2(2) Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement to real property which is intended to be sold and used as an individual's residence and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – A builder may defer the portion of tax imposed on real property that represents the increase in value of the property attributable to improvements resulting from the construction of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earlier of (i) when the owner transfers the residence or (ii) five years from the time the improved property was first subject to being listed for taxation by the builder. On or before September 1 of each year, the collector shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the builder subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the builder from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 3. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(2a) G.S. 105-277.1D, the inventory property tax deferral."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1151
PROPOSED COMMITTEE SUBSTITUTE H1151-PCS50769-ROf-65

Short Title: Res. Lead-Based Paint Hazards/Renovations. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Certification and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities, if the person contracting for the renovation activity requests dust clearance sampling.

(2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation activities covered by this Article.

(3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department or the United States Environmental Protection Agency, and (iv) is certified with the Department to perform renovation activities.

(4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age 6.

(5) Renovation activities. – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling technician. Renovation activities include all activities included in the definition of the term 'renovation' in 40 C.F.R. § 745.83.

(6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling. For purposes of this Article, a zero-bedroom dwelling is any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(7) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work in target housing or child-occupied facilities from a certified renovator and (ii) is employed by a certified renovation firm.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of the Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovation firms are required to distribute EPA-approved pamphlets.

"**§ 130A-453.14. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities for compensation in targeted housing or child-occupied facilities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(2) Perform as a trained renovation worker for compensation in targeted housing or child-occupied facilities unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.

(3) Conduct dust clearance sampling for compensation in targeted housing or child-occupied facilities unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector. For purposes of this Article, the terms 'risk assessor' and 'lead-based paint inspector' shall have the same meaning as provided in Article 19A of this Chapter.

(4) Conduct cleaning verification for compensation in targeted housing or child-occupied facilities unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of fees pursuant to G.S. 130A-453.17.

"**§ 130A-453.15. Renewals of certification.**

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator shall renew his or her certification every five years by meeting the standards for renewal established by the Commission.

"**§ 130A-453.16. Accreditation of training courses and training providers.**

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

(d) Training providers and training courses accredited by the EPA are granted reciprocity, but providers and courses must be registered with the Department and comply with this Article.

"**§ 130A-453.17. Certification and accreditation fee schedule.**

(a) The Department shall collect annual accreditation and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00

(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling technician	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers.

"**§ 130A-453.18. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.**

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals.

"**§ 130A-453.19. Record retention, information distribution, and reporting requirements.**

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates ~~Article 19A~~ Article 19A or 19B of this Chapter or any rules adopted pursuant to ~~Article 19A~~ Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation ~~continues.~~ continues for Article 19A of this Chapter. The penalty shall not exceed seven hundred fifty dollars ($750.00) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under ~~this Article.~~ Article 19A or 19B."

SECTION 2. This act becomes effective January 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1151
PROPOSED COMMITTEE SUBSTITUTE H1151-CSROf-54 [v.2]

6/2/2009 9:39:54 PM

Short Title: Res. Lead-Based Paint Hazards/Renovations. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Certification and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities.

(2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation work covered by this Article.

(3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department, and (iv) is certified with the Department to perform renovation activities.

(4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under six years of age, on

at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age six.

(5) Renovation activities – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling clearance technician. Renovation activities include all activities included in the definition of the term 'renovation' in 40 C.F.R. 745.83.

(6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities. Target housing includes any housing contained in 40 C.F.R. 745.223.

(6) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work from a certified renovator and (ii) is employed by a certified renovation firm.

(7) Visual inspection for cleaning verification. – The visual examination of the renovated area of target housing or a child-occupied facility following renovation activities to determine if visible dust, debris, and other residue remain in the work area.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovators are required to distribute EPA-approved pamphlets.

"**§ 130A-453.14. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities unless the individual is a certified renovator.

(2) Perform as a trained renovation worker unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.

(3) Conduct dust clearance sampling unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector.

(4) Conduct cleaning verification unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of any applicable fees.

"**§ 130A-453.15. Renewals of certification.**

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator may renew his or her certification by taking refresher courses offered by a training provider accredited by the Department and by meeting any additional standards for renewal established by the Commission.

"**§ 130A-453.16. Accreditation of training courses and training providers.**

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

"**§ 130A-453.17. Certification and accreditation fee schedule.**

(a) The Department shall collect annual accreditation, and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00
(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling Technician	$150.00

(7) Certification or recertification of a renovator $150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers.

"**§ 130A-453.18. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.**

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals.

"**§ 130A-453.19. Record retention, information distribution, and reporting requirements.**

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates ~~Article 19A~~ Articles 19A or 19B of this Chapter or any rules adopted pursuant to ~~Article 19A~~ Articles 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article."

SECTION 2. This act becomes effective January 1, 2010.

HOUSE BILL 1151:
Res. Lead-Based Paint Hazards/Renovations

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 2, 2009
Introduced by:	Reps. Farmer-Butterfield, Earle, England, Rapp	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H1151-CSROf-54		

SUMMARY: ***House Bill 1151 establishes a program in the Department of Health and Human Services for the certification of persons and firms performing lead-based paint renovation work in certain residential housing and child-occupied facilities. The program is regulated by the Commission for Public Health. The bill also requires the accreditation of renovation trainers and training courses and establishes fees.***

[As introduced, this bill was identical to S806, as introduced by Sen. Purcell, which is currently in Senate Commerce.]

BILL ANALYSIS:

House Bill 1151 authorizes the Commission for Public Health to establish a state program to regulate persons and firms that perform lead-based paint renovation work, in accordance with federal EPA requirements.

Section 1 creates a new Article 19B in the Public Health Law, entitled "'Certification and Accreditation of Lead-Based Paint Renovation Activities." The new Article requires that renovations performed for compensation in certain residential housing and in child-occupied facilities must be performed by certified renovators or certified renovation firms.

The bill prohibits non-certified renovators or firms from performing renovation activities, conducting dust clearing sampling, or conducting cleaning verification. The Commission is directed to adopt rules governing the qualifications, training, and experience required for certification. Certified renovators, firms, and dust sampling technicians must renew their certification annually.

Training providers and training courses must be accredited annually in accordance with rules adopted by the Commission.

The bill establishes maximum fees for accreditation and certification which are to be used for the administration of the Article. The fees do not revert to the General Fund at the end of the fiscal year. Accreditation fees do not apply to local or State governmental agency personnel, Indian tribes, or nonprofit training providers.

The Commission is directed to adopt rules to implement the provisions of the Article.

Section 2 amends the law governing penalties for violation of the Chapter. The amendment provides that an administrative penalty may be imposed for violation of the new Article or any rules adopted pursuant to it. The penalty shall not exceed $1,000 for each day the violation continues.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

H1151-SMRO-111(CSROf-54) v1

HOUSE BILL 1151

Short Title:	Res. Lead-Based Paint Hazards/Renovations.	(Public)
Sponsors:	Representatives Farmer-Butterfield, Earle, England, Rapp (Primary Sponsors); Bordsen, Brisson, Fisher, Glazier, Harrison, Hughes, Insko, Jones, Lucas, and Neumann.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Registration, Certification, and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Registered renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department, and (iv) is registered with the Department to perform renovation activities.

(2) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities.

(3) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation work covered by this Article.

(4) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in

renovation work from a registered renovator and (ii) is employed by a certified renovation firm.

(5) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age six.

(6) Visual inspection for cleaning verification. – The visual examination of the renovated area of target housing or a child-occupied facility following renovation activities to determine if visible dust, debris, and other residue remain in the work area.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by registered renovators and certified individuals and firms; establishes procedures and requirements for registration and certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires distribution of EPA-approved pamphlets and the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Lead-based paint is presumed to be present in housing and child-occupied facilities covered by this Article. Risk assessments and inspections to determine the presence of lead-based paint or lead-based paint hazards are not required under this Article or the rules adopted by the Commission pursuant to this Article.

"**§ 130A-453.14. Registration of renovators and certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities unless the individual is a registered renovator.

(2) Perform as a trained renovation worker unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a registered renovator.

(3) Conduct dust clearance sampling unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector.

(4) Conduct cleaning verification unless the individual is a registered renovator.

(c) The Commission shall adopt rules governing the registration of renovators and the certification of other individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of any applicable fees.

"**§ 130A-453.15. Renewals of certification and registration.**

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A registered renovator may renew his or her registration by taking refresher courses offered by a training provider accredited by the Department and by meeting any additional standards for renewal established by the Commission.

"**§ 130A-453.16. Accreditation of training courses and training providers.**

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

"**§ 130A-453.17. Registration, certification, and accreditation fee schedule.**

(a) The Department shall collect annual accreditation, registration, and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00
(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling Technician	$150.00
(7)	Registration or reregistration of a renovator	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers. The certification fees imposed under this section do not apply to local or State governmental regulatory agency personnel.

"**§ 130A-453.18. Work practices and responsibilities of renovation firms, registered renovators, and dust sampling technicians.**

The Commission shall establish standards for work practices and define the responsibilities of registered renovators and certified renovation firms and individuals.

"**§ 130A-453.19. Record retention, information distribution, and reporting requirements.**

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, registered renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. This act becomes effective January 1, 2010.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Committee Substitute for

SB 332 A BILL TO BE ENTITLED AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS ACT; TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE AND TO ANNEX CERTAIN PROPERTY OWNED BY THE NC ZOOLOGICAL SOCIETY INTO THE CITY OF ASHEBORO.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

SENATE BILL 332:
Zoo and Zoo Funds Modifications

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 3, 2009
Introduced by:	Sen. Brunstetter	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

SUMMARY: Senate Bill 332 creates a new law providing the methods by which the Department of Environment and Natural Resources (DENR), on behalf of the North Carolina Zoological Park, would be able to purchase goods and services. Additionally, the bill expands the Zoo's Umstead Act exemption; requires DENR to work with the Zoo on outstanding procurement and contract issues, information technology issues, and any other administrative concerns; requires DENR to review the current Memorandum of Understanding (MOA) between DENR and the North Carolina Zoological Society (Society) and revise or replace the MOA as necessary; and establishes a new Study Committee. The original bill is a recommendation from the North Carolina Zoological Park Funding and Organization Study Committee.

[As introduced, this bill was identical to H321, as introduced by Reps. E. Warren, Brubaker, Tarleton, Harrison, which is currently in House State Government/State Personnel, if favorable, Commerce, Small Business, and Entrepreneurship.]

Part I concerns purchasing and contracting authority on behalf of the North Carolina Zoological Park. The bill creates a new statute (G.S. 143-129.8A), allowing the Department of Environment and Natural Resources (DENR) to use specified procedures to contract with a non-State entity on behalf of the Park where:

(i) the contract directly results in the generation of revenue for the State, or

(ii) the use of the acquired goods and services by the Zoo results in increased revenue, or decreased expenditures, for the State.

Limitation - Under G.S. 143-129.8A(b), notice of requests for proposals (RFP) must be given, and contracts must be awarded to the person or entity that submits the best overall proposal. Factors considered in awarding contracts must be identified in the RFP.

Procurement Methods - G.S. 143-129.8A(c) allows DENR to use procurement methods set forth in G.S. 143-135.9, Best Value procurements, in developing and evaluating requests for proposal (RFP). DENR may negotiate with any proposer to obtain a final contract that best meets the needs of the awarding authority. The subsection provides that negotiations allowed do not alter the contract beyond the scope of the original request for proposals in a matter that: (i) deprives the proposers or potential proposers of a fair opportunity to compete and (ii) would have resulted in the award of the contract to a different person or entity if the alternations had been included in the request for proposals. G.S. 143-135.9 defines the following:

- Best Value procurement which is defined as the selection of a contractor based on a determination of which proposal offers the best trade off between price and performance, where quality is considered an integral performance factor. The intent of Best Value procurement is to enable contractors to offer, and the agency to select, the most appropriate solution to meet the business objectives defined in the solicitation.
- Government-Vendor Partnership which is defined as a mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of needed goods or services.

Promotional Rights - G.S. 143-129.8A(d) specifies that subject to DENR approval, a non-State entity awarded a contract resulting in increased revenue or decreased expenditures for the Park is allowed to

advertise, announce, or publicize the provision of services. (This type of promotion is currently prohibited by State rule (01 NCAC 05B.1516)).

Section 1.2 of Part I makes technical amendments and amends the statute to include the North Carolina Zoological Park as an agency that may acquire goods and services using the Best Value procurement method described above, or the Government-Vendor partnership method, described above, for highly complex acquisitions.

Part II extends the Umstead Act exemption to the North Carolina Zoological Park. G.S. 66-58(b) is amended to add The North Carolina Zoological Park to the entities exempt from the restriction of units of State government from engaging directly or indirectly in the sale of items, or to maintain establishments rendering service to the public that are normally provided by private enterprises. Section 2.2 repeals 66-58(c)(18) which provided a specific exemption for the Zoo, this repeal conforms to the full exemption granted above.

Parts III and IV create a reporting requirement on the implementation of Parts I and II.

Under Part III, DENR is required to work with the Zoo to:

- Examine all purchasing and contracting polices and procedures and to identify opportunities for delegation. The bill specifies that for purchases and contracts involving promotion and advertising, DENR must consider increasing the amount for soliciting competitive bids or quotes to $5,000.
- Continue negotiations with the Office of Information Technology Services on the Zoo's information technology needs.
- Identify and address any other administrative issues.

This section also requires DENR to review the current Memorandum of Agreement (MOA) between DENR and the North Carolina Zoological Society and revise or replace the MOA as necessary.

Part IV requires DENR to report to the North Carolina Zoological Park Funding and Organization Study Committee and the Fiscal Research Division on the implementation of Parts I-II no later than Jan. 15, 2010.

Part V of the bill establishes the North Carolina Zoological Park Funding and Organization Study Committee. The Committee consists of 22 members: five members of the Senate, appointed by the President Pro Tempore of the Senate; five members of the House, appointed by the Speaker of the House; the Secretary of DENR, or designee; the Director of the Zoological Park, or designee; the Secretary of Commerce, or designee; the Executive Director of the Division of Tourism, Film and Sports Development, or designee; the Chair of the NC Zoological Park Council, or designee; the Chair of the board of directors of the NC Zoological Society, or designee; two representatives of the Zoological Society, one appointed by the President Pro Tempore and one appointed by the Speaker of the House, upon recommendation of the Zoo Society chair; two at large public members appointed by the President Pro Tempore of the Senate; and two at large public members appointed by the Speaker of the House. The Committee is required to report to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission, on or before May 1, 2010, and then terminates on that date.

Part VI describes property owned by The North Carolina Zoological Society, Inc. Part VI provides that the property described shall be considered in the satellite corporate limits of the City of Asheboro. Under G.S. 160A-58, "Satellite corporate limits" means the corporate limits of a noncontiguous area annexed pursuant to a local act authorizing or effecting noncontiguous annexations, or pursuant to Chapter 160A, Part 4 Annexation of Noncontiguous Areas.

EFFECTIVE DATE: Part VI of the bill would become effective June 30, 2009. The remainder of the bill would become effective when it becomes law.

S332-SMRN-85(e2) v1

Dan Ettefagh, Study Committee Counsel, and Theresa Matula, Committee Staff to the House State Government/State Personnel Committee, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 332*
House Committee Substitute Favorable 5/20/09

Short Title: Zoo and Zoo Funds Modifications. (Public)

Sponsors:

Referred to:

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS ACT; TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE AND TO ANNEX CERTAIN PROPERTY OWNED BY THE NC ZOOLOGICAL SOCIETY INTO THE CITY OF ASHEBORO.

The General Assembly of North Carolina enacts:

PART I: PURCHASING AND CONTRACTING AUTHORITY ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK

SECTION 1.1. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological Park.**

(a) Exemption. – The North Carolina Zoological Park is a State entity whose primary purpose is the attraction of, interaction with, and education of the public regarding issues of global conservation, ecological preservation, and scientific exploration, and that purpose presents unique challenges requiring greater flexibility and faster responsiveness in meeting the needs of and creating the attractions for the Park. Accordingly, the Department of Environment and Natural Resources may use the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law, to contract with a non-State entity on behalf of the Park for the acquisition of goods and services where: (i) the contract directly results in the generation of revenue for the State of North Carolina; or (ii) the use of the acquired goods and services by the Park results in increased revenue or decreased expenditures for the State of North Carolina.

(b) Limitation. – Contracts executed pursuant to the exemption of subsection (a) of this section may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be

considered in awarding contracts shall be identified in the request for proposals.

(c) Procurement Methods. – The Department may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The Department may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Promotional Rights. – Subject to the approval of the Department, a non-State entity awarded a contract that results in increased revenue or decreased expenditures for the Park may advertise, announce, or otherwise publicize the provision of services pursuant to award of the contract."

SECTION 1.2. G.S. 143-135.9 reads as rewritten:

"**§ 143-135.9. ~~"Best Value" information technology procurements.~~Best Value procurements.**

(a) ~~For purposes of this section:~~Definitions. – The following definitions apply in this section:

(1) ~~"Best Value" procurement means the~~Best Value procurement. – The selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

(2) ~~"Government-Vendor Partnership" means a~~Government-Vendor partnership. – A mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of ~~complex technology.~~needed goods or services.

(3) ~~"Information technology" includes electronic~~ Information technology. – Electronic data processing and telecommunications goods and services, microelectronics, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design and/or redesign of business processes.

(4) ~~"Solution-Based Solicitation" means a~~Solution-Based solicitation. – A solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(b) Intent. – The intent of ~~"Best Value" Information Technology~~Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. ~~Business process reengineering, system design, and technology implementation may be combined into a single solicitation.~~

(c) Information Technology. – The acquisition of information technology by the State of North Carolina shall be conducted using the ~~"Best Value"~~Best Value procurement method. For purposes of this section, business process reengineering, system design, and technology

implementation may be combined into a single solicitation. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Office of Information Technology Services, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or subdivision of the State may acquire information technology pursuant to this section.

~~(d) Any county, city, town or subdivision of the State may acquire information technology pursuant to this section.~~

(e) North Carolina Zoological Park. – The acquisition of goods and services under a contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of Environment and Natural Resources on behalf of the North Carolina Zoological Park may be conducted using the Best Value procurement method. For acquisitions which the procuring agency deems to be highly complex, the use of Government-Vendor partnership is authorized."

PART II: EXPANSION OF UMSTEAD ACT EXEMPTION FOR THE NORTH CAROLINA ZOOLOGICAL PARK

SECTION 2.1. G.S. 66-58(b) is amended by adding a new subdivision to read:

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

...

(26) The North Carolina Zoological Park."

SECTION 2.2. G.S. 66-58(c)(18) is repealed.

PART III: ADMINISTRATIVE IMPROVEMENTS TO THE NORTH CAROLINA ZOOLOGICAL PARK OPERATIONS

SECTION 3.1. The Secretary of the Department of Environment and Natural Resources shall work with the North Carolina Zoological Park to do the following:

(1) Examine all purchasing and contracting policies and procedures. The Department shall identify opportunities for delegating purchasing and contracting responsibilities to the Park where appropriate. For purchases and contracts involving promotion and advertising, the Department shall consider increasing the amount over which the Park must solicit competitive bids or quotes to five thousand dollars ($5,000).

(2) Continue negotiations with the Office of Information Technology Services regarding the implementation of Article 3D of Chapter 147 of the General Statutes.

(3) Identify and address any other administrative concerns of the Park.

SECTION 3.2. The Secretary of the Department of Environment and Natural Resources shall review the current Memorandum of Understanding between the Department and the North Carolina Zoological Society. The Secretary shall work with the Society to make appropriate revisions to or replace the Memorandum, as needed.

PART IV: REPORT

SECTION 4. The Department of Environment and Natural Resources shall report to the North Carolina Zoological Park Funding and Organization Study Committee and to the Fiscal Research Division of the Legislative Services Office on the progress and implementation of Parts I and III of this act no later than January 15, 2010.

PART V: ESTABLISHMENT OF COMMITTEE

SECTION 5.1. Committee Established. – The North Carolina Zoological Park Funding and Organization Study Committee is hereby established.

SECTION 5.2. Membership. – The Committee shall consist of 22 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.
(2) Five members of the House appointed by the Speaker of the House of Representatives.
(3) The Secretary of Environment and Natural Resources, or the Secretary's designee.
(4) The Director of the Zoological Park, or the Director's designee.
(5) The Secretary of Commerce, or the Secretary's designee.
(6) The Executive Director of the Division of Tourism, Film and Sports Development of the Department of Commerce, or the Executive Director's designee.
(7) The Chair of the North Carolina Zoological Park Council, or the Chair's designee.
(8) The Chair of the board of directors of the North Carolina Zoological Society, Inc., or the Chair's designee.
(9) Two additional representatives of the Zoo Society Board, who may be comprised of current or former members, one appointed by the President Pro Tempore of the Senate upon recommendation of the Chair of the Zoo Society Board, one appointed by the Speaker of the House of Representatives upon recommendation of the Chair of the Zoo Society Board.
(10) Two representatives from the public at large appointed by the President Pro Tempore of the Senate.
(11) Two representatives from the public at large appointed by the Speaker of the House of Representatives.

SECTION 5.3. Cochairs. – The Committee shall have three cochairs, one designated by the President Pro Tempore of the Senate and two designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

SECTION 5.4. Quorum. – A quorum of the Committee shall consist of 10 members.

SECTION 5.5. Vacancies. – Any vacancy on the Committee shall be filled by the original appointing authority.

SECTION 5.6. Purpose and Duties. – The Committee shall study: (i) funding issues associated with the Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the current organizational structure of the Zoological Park, and other potential organizational structures, including, but not limited to, reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the Zoological Park.

SECTION 5.7. Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 5.8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

SECTION 5.9. Consultants. – The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 5.10. Meetings. – The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 5.11. Report. – The Committee shall report its findings and recommendations to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission on or before May 1, 2010, at which time the Committee shall terminate.

SECTION 5.12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

PART VI: ANNEXATION

SECTION 6. The following described property, owned by The North Carolina Zoological Society, Inc., which shall be considered satellite corporate limits, is added to the corporate limits of the City of Asheboro:

Tract 1:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point located at the intersection of the southern margin of the 60-foot right-of-way for Old Cox Road (North Carolina Secondary Road 2834) with the western margin of the 60-foot right-of-way for Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the western margin of the right-of-way for Lions Rest Road the following courses and distances: South 47 degrees 23 minutes 52 seconds West 71.83 feet to a computed point; thence South 38 degrees 02 minutes 09 seconds West 250.53 feet to a computed point; thence the following course and distance along the Michael L. Spoon and Joy W. Spoon property described in the Randolph County Public Registry in Deed Book 1578 at Page 223 and further described as Tract # 4 on a plat recorded in Plat Book 55, Page 59, Randolph County Public Registry: North 02 degrees 19 minutes 39 seconds East 582.77 feet to a computed point on the southern margin of the right-of-way for Old Cox Road; thence along the southern margin of the right-of-way for Old Cox Road the following courses and distances: South 26 degrees 15 minutes 50 seconds East 196.77 feet to a computed point; thence South 29 degrees 59 minutes 18 seconds East 142.30 feet to a computed point; thence South 34 degrees 42 minutes 28 seconds East 44.57 feet to the point and place of the BEGINNING, and containing 1.24 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(,) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

Tract 2:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point located at the intersection of the southern margin of the 60-foot right-of-way for Old Cox Road (North Carolina Secondary Road 2834) with the eastern margin of the 60-foot right-of-way for Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the southern margin of the right-of-way for Old Cox Road the following courses and distances: South 40 degrees 51 minutes 39 seconds East 80.82 feet to a computed point; thence South 45 degrees 17 minutes 21 seconds East 122.60 feet to a computed point; thence South 50 degrees 58 minutes 50 seconds East 460.64 feet to a computed point; thence South 47 degrees 25 minutes 21 seconds East 138.01 feet to a computed point; thence South 42 degree 32 minutes 42 seconds East 76.35 feet to a computed point; thence South 33 degrees 47 minutes 51 seconds East 55.50 feet to a computed point; thence South 25 degrees 39 minutes 17 seconds East 56.30 feet to a computed point; thence

South 18 degree 37 minutes 48 seconds East 359.21 feet to a computed point; thence South 21 degrees 39 minutes 35 seconds East 103.29 feet to a computed point; thence South 31 degrees 40 minutes 58 seconds East 64.50 feet to a computed point; thence South 37 degrees 24 minutes 58 seconds East 62.95 feet to a computed point; thence South 42 degrees 59 minutes 46 seconds East 48.02 feet to a computed point; thence South 43 degrees 25 minutes 04 seconds East 16.00 feet to a computed point; thence South 51 degrees 03 minutes 46 seconds East 44.35 feet to a computed point; thence South 60 degrees 52 minutes 48 seconds East 63.96 feet to a computed point; thence South 66 degrees 12 minutes 12 seconds East 83.33 feet to a computed point; thence South 72 degrees 36 minutes 26 seconds East 143.43 feet to a computed point; thence South 79 degrees 04 minutes 38 seconds East 123.36 feet to a computed point; thence South 85 degrees 18 minutes 43 seconds East 260.01 feet to a computed point; thence South 79 degrees 50 minutes 27 seconds East 197.72 feet to a computed point; thence South 76 degrees 27 minutes 24 seconds East 158.04 feet to a computed point; thence South 72 degrees 04 minutes 27 seconds East 199.41 feet to a computed point; thence South 74 degrees 03 minutes 04 seconds East 237.01 feet to a computed point; thence South 64 degrees 04 minutes 27 seconds East 110.22 feet to a computed point; thence South 52 degrees 41 minutes 19 seconds East 116.00 feet to a computed point; thence South 36 degrees 02 minutes 42 seconds East 159.32 feet to a computed point; thence South 31 degrees 54 minutes 01 second East 256.41 feet to a computed point; thence South 30 degrees 14 minutes 02 seconds East 206.54 feet to a computed point; thence South 26 degrees 21 minutes 39 seconds East 154.29 feet to a computed point; thence South 19 degrees 46 minutes 07 seconds East 159.66 feet to a computed point; thence South 16 degrees 26 minutes 06 seconds East 114.21 feet to a computed point; thence along the Randolph Telephone Membership Corporation property described in Deed Book 1782, Page 2350, Randolph County Public Registry the following courses and distances: South 89 degrees 09 minutes 27 seconds West 1,124.16 feet to a computed point; thence South 15 degrees 53 minutes 23 seconds East 421.10 feet to a computed point; thence along the western boundary line of the Randolph Telephone Membership Corporation property described in Deed Book 1132, Page 308, Randolph County Public Registry the following courses and distances: South 29 degrees 21 minutes 30 seconds East 105.34 feet to a computed point; thence South 22 degrees 21 minutes 35 seconds East 19.06 feet to a computed point; thence South 29 degrees 59 minutes 37 seconds East 50.01 feet to a computed point; thence South 46 degrees 36 minutes 30 seconds East 20.47 feet to a computed point; thence South 27 degrees 13 minutes 25 seconds East 24.32 feet to a computed point; thence South 23 degrees 10 minutes 39 seconds East 22.23 feet to a computed point; thence South 36 degrees 08 minutes 58 seconds East 25.85 feet to a computed point; thence South 28 degrees 01 minutes 04 seconds East 54.02 feet to a computed point; thence South 33 degrees 35 minutes 31 seconds East 84.27 feet to a computed point; thence South 31 degrees 58 minutes 41 seconds East 27.85 feet to a computed point; thence South 23 degrees 50 minutes 36 seconds East 114.39 feet to a computed point; thence South 20 degrees 01 minute 36 seconds East 111.36 feet to a computed point; thence along the Pat M. Bailey, Jr. and Betty Bailey property described in Deed Book 536, Page 112, Randolph County Public Registry the following courses and distances: South 73 degrees 34 minutes 44 seconds West 647.82 feet to a computed point; thence South 86 degrees 41 minutes 04 seconds West 135.98 feet to a computed point; thence along the Howard E. Cooper and Debra D. Cooper property described in Deed Book 1040, Page 450, Randolph County Public Registry the following courses and distances: North 01 degree 21 minutes 55 seconds West 257.07 feet to a computed point; thence North 00 degrees 44 minutes 12 seconds West 942.23 feet to a computed point; thence North 85 degrees 28 minutes 49 seconds West 585.33 feet to a computed point; thence South 03 degrees 57 minutes 26 seconds East 2,158.71 feet to a computed point; thence South 00 degrees 10 minutes 38 seconds West 404.07 feet along the Howard E. Cooper and Debra D. Cooper property described in Deed Book 1312, Page 1181,

Randolph County Public Registry to a computed point; thence North 89 degrees 48 minutes 02 seconds West 89.76 feet to a computed point located on the northern margin of the 60-foot right-of-way for Ross Harris Road (North Carolina Secondary Road 2835); thence along the northern margin of the right-of-way for Ross Harris Road the following courses and distances: North 41 degrees 40 minutes 34 seconds West 83.84 feet to a computed point; thence North 32 degrees 13 minutes 59 seconds West 142.02 feet to a computed point; thence North 47 degrees 51 minutes 45 seconds West 102.66 feet to a computed point; thence North 41 degrees 08 minutes 33 seconds West 93.28 feet to a computed point; thence North 22 degrees 55 minutes 30 seconds West 72.20 feet to a computed point; thence North 26 degrees 08 minutes 11 seconds West 150.11 feet to a computed point; thence North 30 degrees 59 minutes 12 seconds West 53.66 feet to a computed point; thence North 46 degrees 26 minutes 33 seconds West 49.16 feet to a computed point; thence North 63 degrees 21 minutes 52 seconds West 45.45 feet to a computed point; thence North 75 degrees 32 minutes 51 seconds West 12.52 feet to a computed point; thence North 87 degrees 32 minutes 54 seconds West 40.91 feet to a computed point; thence South 84 degrees 59 minutes 30 seconds West 160.36 feet to a computed point; thence South 73 degrees 42 minutes 01 second West 141.19 feet to a computed point; thence South 79 degrees 52 minutes 07 seconds West 73.90 feet to a computed point; thence North 82 degrees 58 minutes 18 seconds West 174.69 feet to a computed point; thence North 80 degrees 11 minutes 24 seconds West 260.44 feet to a computed point; thence North 84 degrees 13 minutes 10 seconds West 142.73 feet to a computed point; thence South 89 degrees 53 minutes 02 seconds West 123.50 feet to a computed point; thence South 80 degrees 51 minutes 19 seconds West 185.62 feet to a computed point; thence South 70 degrees 49 minutes 48 seconds West 64.71 feet to a computed point; thence South 60 degrees 55 minutes 22 seconds West 30.61 feet to a computed point; thence along the Edward B. Commins and Joyce M. Commins property described in Deed Book 2059, Page 1701, Randolph County Public Registry the following courses and distances: North 02 degrees 20 minutes 34 seconds West 214.30 feet to a computed point; thence South 89 degrees 12 minutes 54 seconds West 784.70 feet to a computed point; thence North 00 degrees 25 minutes 18 seconds West 594.29 feet to a computed point located on the eastern boundary line of the Roger D. DeHart property described in Estate File 76E, Page 195 in the office of the Randolph County Clerk of Superior Court; thence continuing along the eastern boundary line of the said DeHart property the following courses and distances: South 88 degrees 43 minutes 33 seconds East 230.45 feet to a computed point; thence North 02 degrees 17 minutes 22 seconds East 253.20 feet to a computed point; thence North 89 degrees 17 minutes 57 seconds East 281.03 feet to a computed point; thence North 05 degrees 53 minutes 27 seconds East 745.46 feet to a computed point; thence North 05 degrees 22 minutes 55 seconds East 1,642.09 feet to a computed point located on the southern boundary line of the Carol Woodell Brown property described in Deed Book 1578, Page 221, Randolph County Public Registry and further described as Tract # 2 on a plat recorded in Plat Book 55, Page 59, Randolph County Public Registry; thence continuing along the southern boundary line of the said Brown property the following course and distance: South 87 degrees 17 minutes 36 seconds East 515.74 feet to a computed point; thence North 02 degrees 19 minutes 35 seconds East 924.06 feet to a computed point located on the eastern margin of the right-of-way for Lions Rest Road; thence continuing along the eastern margin of the right-of-way for Lions Rest Road the following courses and distances: North 40 degrees 19 minutes 21 seconds East 60.61 feet to a computed point; thence North 38 degrees 06 minutes 16 seconds East 264.97 feet to a computed point; thence North 47 degrees 12 minutes 21 seconds East 62.01 feet to the point and place of the BEGINNING, and containing 253.88 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(,) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is

identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

Tract 3:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point on the southern margin of the 60-foot right-of-way for Ross Harris Road (North Carolina Secondary Road 2835) that is located North 65 degrees 45 minutes 18 seconds East 2,174.68 feet from the intersection of the centerline of Ross Harris Road with the centerline of Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the southern margin of the right-of-way for Ross Harris Road the following courses and distances: South 84 degrees 24 minutes 56 seconds East 33.40 feet to a computed point; thence South 80 degrees 09 minutes 42 seconds East 259.70 feet to a computed point; thence South 82 degrees 59 minutes 7 seconds East 185.26 feet to a computed point; thence North 79 degrees 57 minutes 47 seconds East 86.07 feet to a computed point; thence North 73 degrees 42 minutes 29 seconds East 138.58 feet to a computed point; thence North 84 degrees 57 minutes 07 seconds East 150.58 feet to a computed point; thence South 87 degrees 39 minutes 11 seconds East 30.53 feet to a computed point; thence South 63 degrees 19 minutes 42 seconds East 30.08 feet to a computed point; thence South 46 degrees 34 minutes 25 seconds East 32.19 feet to a computed point; thence South 31 degrees 02 minutes 07 seconds East 42.91 feet to a computed point; thence South 26 degrees 05 minutes 01 second East 145.84 feet to a computed point; thence South 22 degrees 52 minutes 53 seconds East 80.05 feet to a computed point; thence South 41 degrees 08 minutes 40 seconds East 106.58 feet to a computed point; thence South 47 degrees 54 minutes 11 seconds East 97.88 feet to a computed point; thence South 32 degrees 13 minutes 39 seconds East 138.76 feet to a computed point; thence South 41 degrees 38 minutes 39 seconds East 37.62 feet to a computed point; thence departing from the southern margin of the right-of-way for Ross Harris Road and following a bearing and distance of North 89 degrees 05 minutes 46 seconds West 1,271.06 feet to a computed point located at the southeastern corner of the Wayne Miller and Teresa Miller property described in Deed Book 1119, Page 13, Randolph County Public Registry; thence along the eastern boundary line of the said Miller property the following course and distance: North 01 degree 00 minutes 30 seconds West 552.92 feet to the point and place of the BEGINNING, and containing 13.06 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(,) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

PART VII. EFFECTIVE DATE

SECTION 7. Part VI of this act becomes effective June 30, 2009. The remainder of this act is effective when it becomes law.

NOTE:

SB 412 **MODIFY NC LIMITED LIABILITY COMPANY ACT**
Sponsor: Senator Brunstetter
Will be heard June 10, 2009

SB 709 **HOME IMPROVEMENT FRAUD**
Sponsor: Senator Allran
Will be heard June 10, 2009

SB 1006 **WITHHOLDING ON CONTRACTORS BY ITIN**
Sponsor: Senator Hoyle
Will be heard at a later date

SENATE BILL 412
Judiciary I Committee Substitute Adopted 4/1/09

Short Title: Modify NC Limited Liability Company Act. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a ~~manager~~ manager, director, or executive of the limited liability company;

(2) If the limited liability company has not been formed or ~~if no initial members of the limited liability company have been identified in the manner provided in this Chapter,~~ if the limited liability company has never had any members, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 2. G.S. 57C-3-01 reads as rewritten:

"**§ 57C-3-01. Admission of members.**

(a) Unless the articles of organization of a limited liability company provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) A person may be admitted as a member of a limited liability company:

(1) In the case of a person acquiring a membership interest ~~directly~~ from the limited liability company, (i) upon being so identified as a member by the organizers of the limited liability company in accordance with ~~G.S. 57C-2-20(c) or~~ G.S. 57C-2-20(c), (ii) ~~upon compliance with~~ as provided in the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the unanimous consent of the ~~members; and~~ members, or (iii) upon being designated or otherwise appointed as a member under G.S. 57C-6-01(4);

(2) In the case of an assignee ~~of~~ or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to an interest of a ~~member, upon~~

~~compliance with the provisions of G.S. 57C-5-04(a).~~ member in a limited liability company, as provided in G.S. 57C-5-04(a); and

(3) In connection with a business entity converting or merging into the limited liability company under Part 1 or Part 2 of Article 9A of this Chapter.

(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 3. G.S. 57C-4-06 is amended by adding a new subsection to read:

"**§ 57C-4-06. Restrictions on making distributions.**

...

(f) As used in this section, "distribution" does not include amounts constituting reasonable compensation for present or past services and does not include reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."

SECTION 4. G.S. 57C-5-04 reads as rewritten:

"**§ 57C-5-04. Right of assignee to become a member.**

(a) An assignee of (or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member only with ~~the assignee's consent and, except as otherwise provided in the articles of organization or operating agreement, only if the other members unanimously agree.~~ that person's consent and:

(1) By meeting the requirements provided in the articles of organization or operating agreement;

(2) By the unanimous consent of the members, if the articles of organization or operating agreement do not provide otherwise; or

(3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability company ceases to have any members.

The consent of a member may be evidenced ~~in any manner specified~~ as provided in the articles of organization or operating ~~agreement, but in the absence of such specification, consent shall~~ agreement. If the articles of organization or operating agreement do not provide otherwise, then consent is to be evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of members.

(b) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreements, and this Chapter. Notwithstanding the preceding sentence, unless otherwise provided in a written operating agreement, an assignee who becomes a member is liable for any obligations of his assignor to make contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from ~~his~~ liability ~~to the limited liability company~~ that the assignor may have under G.S. 57C-4-02 ~~(liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).~~ or G.S. 57C-4-07."

SECTION 5. G.S. 57C-5-05 reads as rewritten:

"**§ 57C-5-05. Powers of legal representative of a ~~deceased, incompetent, or~~ dissolved member.**

~~Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a member. If~~ Unless otherwise provided in the articles of organization or a written operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors."

SECTION 6. G.S. 57C-6-01 reads as rewritten:

"**§ 57C-6-01. Dissolution.**

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

(1) The time specified in the articles of organization or a written operating agreement;

(2) The happening of an event specified in the articles of organization or a written operating agreement;

(3) The written consent of all ~~members;~~ members or, if the limited liability company never had any members, a majority of the organizers;

(4) ~~Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members. The foregoing to the contrary notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;~~ The 90th day after the day on which a limited liability company that once had one or more members ceases to have any members, unless within that 90-day period, one or more persons are designated or otherwise admitted, with their consent, as members either as provided by the articles of organization or a written operating agreement or, if the articles of organization or written operating agreement do not so provide, are designated or otherwise admitted as members by the assignee (or other person having only the rights of an assignee under G.S. 57C-5-02 who controls the interest) of the person who was the last member of the limited liability company; or

(5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

SECTION 7. G.S. 57C-6-06.1 is repealed.

SECTION 8. G.S. 57C-10-03 reads as rewritten:

"**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

(a) The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.

(b) The law of estoppel shall apply to this Chapter.

(c) The law of agency shall apply under this Chapter.

(d) This Chapter shall not be construed so as to impair the obligations of any contract existing when this Chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this Chapter takes effect.

(e) Except as otherwise provided in this Chapter, it is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

SECTION 9. This act becomes effective January 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 709
Judiciary II Committee Substitute Adopted 5/4/09

Short Title: Home Improvement Fraud. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-104.1. Home improvement fraud; penalties.**

(a) The following definitions apply in this section:

(1) Contractor. – A person who has agreed to perform any home improvement in exchange for compensation, including any agent or employee of the person. The term includes a subcontractor who has agreed to perform any home improvement. The term does not include a person who is licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes.

(2) Home improvement. – Any alteration, repair, modification, or other improvement to any dwelling house or to any structure within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property.

(b) Home improvement fraud is committed when a contractor knowingly engages in any of the following actions:

(1) The use by a contractor of any false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, with the intent to cause any other person to enter into a home improvement contract.

(2) The damaging of any property of any person by a contractor with the intent to induce that person to enter into a home improvement contract.

(c) A person convicted of home improvement fraud shall be punished as follows:

(1) For a first offense a person is guilty of a Class H felony.

(2) For a second offense a person is guilty of a Class F felony.

(3) For a third or subsequent offense a person is guilty of a Class C felony.

(d) In addition to the penalties imposed under subsection (c) of this section, the court, in its discretion, may also order restitution."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 1006
Finance Committee Substitute Adopted 5/6/09
Third Edition Engrossed 5/12/09

Short Title: Withholding on Contractors Identified by ITIN. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.1 reads as rewritten:

"**§ 105-163.1. Definitions.**

The following definitions apply in this Article:

(1) Compensation. – Consideration a payer pays ~~a~~ to any of the following:
  a. A nonresident individual or nonresident entity for personal services performed in this State.
  b. An ITIN holder who is a contractor and not an employee for services performed in this State.

~~(2) Contractor. Either of the following:~~
  ~~a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~
  ~~b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~

(3) Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.

(4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
  a. Controls the payment of wages to an individual for services performed for another.

b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
c. Pays wages on behalf of a unit of government that is not located in this State.
d. Pays wages for any other reason.

(6) Individual. – Defined in G.S. 105-134.1.

(6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.

(6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).

(7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(7a) Nonresident contractor. – Either of the following:
a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

(8) Nonresident entity. – Any of the following:
a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

(9) Pass-through entity. – Defined in G.S. 105-228.90.

(10) Payer. – A person who, in the course of a trade or business, pays ~~a~~ compensation to any of the following:
a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.
b. An ITIN holder who is a contractor and not an employee for services performed in this State.

(11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.

(11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.

(12) Taxable year. – Defined in section 441(b) of the Code.

(13) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include either of the following:

a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).

b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.

(14) Withholding agent. – An employer, a pension payer, or a payer."

SECTION 2. G.S. 105-163.3 reads as rewritten:

"**§ 105-163.3. Certain payers must withhold taxes.**

(a) Requirement. – Every payer who pays ~~a contractor~~ more than one thousand five hundred dollars ($1,500) during a calendar year ~~shall~~ to either a nonresident contractor or an ITIN contractor must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

(c) ~~Returns; Due Date.~~ Returns. – A payer ~~shall~~ must file a return with the Secretary ~~on a form prepared by the Secretary and shall provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the payer pays compensation to a contractor. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.~~ and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) Annual ~~Statement; Report to Secretary.~~ Statement and Report. – A payer required to deduct and withhold from a contractor's compensation under this section ~~shall furnish to the contractor duplicate copies of~~ must give the contractor a written statement ~~showing the following:~~ that sets out the following information and any other information required by the Secretary:

(1) The payer's name, address, and taxpayer identification number.

(2) The contractor's name, address, and taxpayer identification number.

(3) The total amount of compensation paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar ~~year. If~~ year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the ~~statement,~~ statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor. ~~The Secretary may require the payer to include additional information on the statement.~~

Each payer ~~shall~~ must file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from

payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer ~~shall~~ must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer ~~shall~~ must obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer ~~shall~~ must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer ~~shall~~ must obtain the partnership's address and taxpayer identification number. The payer ~~shall~~ must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section ~~must:~~must take the following actions:

(1) Not report the amount refunded on the annual statement required by subsection ~~(d); and~~(d) of this section.

(2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010.

CORRECTED NOTICE
NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 10, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Add SB 922 and Remove SB 1006

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 412	Modify NC Limited Liability Company Act.	Senator Brunstetter
SB 709	Home Improvement Fraud.	Senator Allran
SB 922	Modify SBIR/STTR Grant Requirements.	Senator Rand
~~SB 1006~~	~~Withholding on Contractors Identified by ITIN.~~	~~Senator Hoyle~~
SB 1029	PEO Amendments.	Senator Bingham

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10:15 a.m.** on **June 09, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

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COMMENTS:

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SB 709	Home Improvement Fraud.	Senator Allran
SB 1006	Withholding on Contractors Identified by ITIN.	Senator Hoyle
SB 1029	PEO Amendments.	Senator Bingham

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10:15 a.m.** on **June 09, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, June 10, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 412	Modify NC Limited Liability Company Act	Senator Brunstetter
SB 709	Home Improvement Fraud	Senator Allran
SB 922	Modify SBIR/STTR Grant Requirements	Senator Rand
SB 1029	PEO Amendments	Senator Bingham

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, June 10, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, June 10, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Goforth, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Brown, Cole, Floyd, Frye, Harrell, McGee, Mills, Pierce, Samuelson, Tarleton, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized Nancy Goodman, Acting Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 412 – A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.
Sponsor: Senator Brunstetter
Senator Brunstetter presented SB 412 and said that it was for the purpose of making technical changes to bring the law up to date based on actual experience with the Act. He said the second set of changes would be more substantive and would be dealt with in the next session of the General Assembly and will require more discussion. Senator Brunstetter answered questions from Committee members. Mark Griffith, Co-Chair of the Business Section, NC Bar Association, and a partner with Poyner and Spruill appeared before the committee and echoed what Senator Brunstetter said. He said that the changes are clarifying changes—nothing substantive in the bill. Discussion followed. Representative McGee moved for a favorable report for SB 412 with a re-referral to the Committee on Judiciary I. The motion passed.

SB 709 – A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD. Sponsor: Senator Allran
Senator Allran presented SB 709 and said the idea for it came from a constituent in his district. This was about flimflam men taking advantage of innocent people by saying that they need work, taking the person's money, and then skipping town. SB 709 would make it a crime to use any false pretense to cause another to enter into a contract for home repair, or to damage any property of another to cause that person to enter into a contract for home repair. The crime of home improvement fraud would be punishable as a Class H felony for a first offense, a Class F felony for a second offense, and a Class C felony for a third or subsequent offense. Representative Floyd moved for a favorable report for SB 709, and recommended that the bill be re-referred to the Committee on Judiciary III. The motion passed.

SB 922 – A BILL TO BE ENTITLED AN ACT TO EXCLUDE RESEARCH THAT CANNOT BE CONDUCTED WITHIN THE STATE FROM ELIGIBILITY CALCULATIONS FOR GRANTS FROM THE ONE NORTH CAROLINA SMALL BUSINESS PROGRAM. Sponsor: Senator Rand

Representative Adams moved for adoption of the proposed House committee substitute, and it was adopted. Senator Rand explained SB 922. He said that it involved a program that the NC Department of Commerce has for grants for innovative research and small business technology transfer research. The bill required that at least 51% of the research be conducted in North Carolina. Senator Rand said there was not a laboratory in North Carolina where this can be done. This would say that it be done to the extent practical. The research is deemed important enough that the federal government has also waived its requirement that the research be done by a small business. This is important cutting-edge research and will allow for it to proceed and for them to receive the grant. He said that the proposed House committee substitute also exempts the Community College System Office from rule making in developing guidelines and criteria administering the Customized Training Program. Discussion followed. Representative Tarleton moved for a favorable report for the proposed House committee substitute, unfavorable to the Senate committee substitute bill and recommended the House committee substitute bill be re-referred to the Committee on Finance. Motion passed.

SB 1029 – A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS. Sponsor: Senator Bingham

Representative Cole moved for adoption of the proposed House committee substitute, and it was adopted. Representative Goforth presented HB 1029. He said the bill was about the Professional Employer Organization (PEO). PEOs do NC taxes; benefit package, workman's compensation premiums, and unemployment compensation. For anyone licensed before 2008, the bill would require $100,000 bond. If licensed after October 2008, it would require 5% or $500,000 whichever is greater. Discussion followed. Ed Turlington of Brooks Pierce law firm, and Counsel to the Trade Association for PEOs in North Carolina, spoke in favor of the bill. He said the bill is a bill that passed through the Senate 48-0. The reason the bill has been introduced this year by Senator Bingham was to clarify some changes that legislators made in the existing PEO licensing law in the 2008 legislative session. He said that the proposed bill actually clarifies the dividing line on the bonding amounts. Representative Adams moved for a favorable report to the House committee substitute, unfavorable to the Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Insurance. The motion passed.

The meeting adjourned at 1:26 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Nancy Goodman
Acting Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 10, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Wohlers	DOI
Sara Nienow	DOC
Andrew Meehan	NCMEC
Daniel Rann	K+L Gates
Tony Riddick	NCDOI
Kim Ennis	NCDOI
Rose Williams	NCDOI
Paul Mahony	CAPSTAT
John Hoomani	NCDOA
Kim Leonard	NCBH
Tom Jones	The Gannett Cos.

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 10, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Misken	Capstrat
Rosie Bevacqua Coma	Capstrat
[signature]	NCCCS
Jennifer Willis	"
[signature]	Forsyth County
[signature]	Forsyth Co.
Amanda Snowden	Administaff
[signature]	BP
Peter Harris	Commerce
[signature]	NCSTA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 10, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC HBA

Rep. Dickson

Room 1228
1:00 PM

House Pages

COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP

Name of Committee Date: 6-10-09

1. Name: Jazmine Maldonado
   County: Forsyth
   Sponsor: Walumba
2. Name: Hannah Morgan
   County: Wake
   Sponsor: Avila
3. Name: Antonio Kornegay
   County: Jones
   Sponsor: Wainwright
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: FRANK PREVO - CARLES WILLIAMS
2. Name: EARL COKER - TOM WILDER

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 412 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 412:
Modify NC Limited Liability Company Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	June 3, 2009
Introduced by:	Sen. Brunstetter	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 412 would make technical and clarifying changes to the North Carolina Limited Liability Company Act.

CURRENT LAW & BILL ANALYSIS:

Section 1. Certain documents, such as articles of organization and annual reports, relating to limited liability companies (LLCs) are required to be filed with the Secretary of State's office. Currently, statute only authorizes the manager to execute those documents. Section 1 would also authorize directors, persons vested with the authority to direct the management of the LLC, and executives, persons vested with the authority to participate in the management under the direction of the managers or directors, to file documents.

Section 2. Persons may be admitted as members to an LLC as provided in G.S. 57C-3-01. Section 2 would provide two additional ways persons may be admitted as members:

- Persons designated or appointed upon the dissolution of the LLC.
- Persons admitted in connection with a conversion or merger of a business entity into an LLC.

Section 3. Chapter 57C contains a specific definition of distribution, which is a "direct or indirect transfer of money or other property or incurrence of indebtedness by a LLC to or for the benefit of its members in respect of their membership interests." G.S. 57C-1-03(6). That is the definition applied to the section restricting distributions from LLCs, G.S. 57C-4-06. Section 3 of would clarify that for the purpose of determining when a distribution is restricted, those amounts paid as reasonable compensation are not included in the calculation.

Section 4. Non-members of an LLC may acquire or retain rights to a membership, which may be by assignment of right or some other method. Section 4 acknowledges that, and clarifies the methods by which that person may be admitted as a member of the LLC.

Sections 5, 6, and 7. Section 5 deletes the language regarding a personal representative or guardian of a member having the authority to exercise all of the member's rights for the purpose of settling the estate or administering the member's property. Section 6 deals with dissolution of the LLC when the LLC no longer has any members, allowing for persons designated or admitted as members by the assignee of the last member to become a member and thereby having the authority to manage the LLC. Section 7 repeals a statute that is no longer necessary due to the changes made in Section 6.

Section 8. Section 8 adds language to clarify the intent of the General Assembly to give "maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

EFFECTIVE DATE: The bill would become effective January 1, 2010.

BACKGROUND: Senate Bill 412 comes to the General Assembly as a recommendation of the North Carolina Bar Association.

412-SMRQ-95(e2) v2

**Erika Churchill, Counsel to Senate Judiciary I, significantly contributed to this summary.*

SENATE BILL 412
Judiciary I Committee Substitute Adopted 4/1/09

Short Title: Modify NC Limited Liability Company Act. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a ~~manager~~ manager, director, or executive of the limited liability company;

(2) If the limited liability company has not been formed or ~~if no initial members of the limited liability company have been identified in the manner provided in this Chapter,~~ if the limited liability company has never had any members, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 2. G.S. 57C-3-01 reads as rewritten:

"**§ 57C-3-01. Admission of members.**

(a) Unless the articles of organization of a limited liability company provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) A person may be admitted as a member of a limited liability company:

(1) In the case of a person acquiring a membership interest ~~directly~~ from the limited liability company, (i) upon being so identified as a member by the organizers of the limited liability company in accordance with ~~G.S. 57C-2-20(c) or~~ G.S. 57C-2-20(c), (ii) ~~upon compliance with~~ as provided in the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the unanimous consent of the ~~members; and~~ members, or (iii) upon being designated or otherwise appointed as a member under G.S. 57C-6-01(4);

(2) In the case of an assignee ~~of~~ or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to an interest of a ~~member, upon~~

~~compliance with the provisions of G.S. 57C-5-04(a).~~ member in a limited liability company, as provided in G.S. 57C-5-04(a); and

(3) In connection with a business entity converting or merging into the limited liability company under Part 1 or Part 2 of Article 9A of this Chapter.

(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 3. G.S. 57C-4-06 is amended by adding a new subsection to read:

"**§ 57C-4-06. Restrictions on making distributions.**

...

(f) As used in this section, "distribution" does not include amounts constituting reasonable compensation for present or past services and does not include reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."

SECTION 4. G.S. 57C-5-04 reads as rewritten:

"**§ 57C-5-04. Right of assignee to become a member.**

(a) An assignee of (or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member only with ~~the assignee's consent and, except as otherwise provided in the articles of organization or operating agreement, only if the other members unanimously agree.~~ that person's consent and:

(1) By meeting the requirements provided in the articles of organization or operating agreement;

(2) By the unanimous consent of the members, if the articles of organization or operating agreement do not provide otherwise; or

(3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability company ceases to have any members.

The consent of a member may be evidenced ~~in any manner specified~~ as provided in the articles of organization or operating ~~agreement, but in the absence of such specification, consent shall~~ agreement. If the articles of organization or operating agreement do not provide otherwise, then consent is to be evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of members.

(b) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreements, and this Chapter. Notwithstanding the preceding sentence, unless otherwise provided in a written operating agreement, an assignee who becomes a member is liable for any obligations of his assignor to make contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from ~~his~~ liability ~~to the limited liability company~~ that the assignor may have under G.S. 57C-4-02 ~~(liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).~~ or G.S. 57C-4-07."

SECTION 5. G.S. 57C-5-05 reads as rewritten:

"**§ 57C-5-05. Powers of legal representative of a ~~deceased, incompetent, or~~ dissolved member.**

~~Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a member. If~~ Unless otherwise provided in the articles of organization or a written operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors."

SECTION 6. G.S. 57C-6-01 reads as rewritten:

"**§ 57C-6-01. Dissolution.**

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

(1) The time specified in the articles of organization or a written operating agreement;

(2) The happening of an event specified in the articles of organization or a written operating agreement;

(3) The written consent of all ~~members;~~ members or, if the limited liability company never had any members, a majority of the organizers;

(4) ~~Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members. The foregoing to the contrary notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;~~ The 90th day after the day on which a limited liability company that once had one or more members ceases to have any members, unless within that 90-day period, one or more persons are designated or otherwise admitted, with their consent, as members either as provided by the articles of organization or a written operating agreement or, if the articles of organization or written operating agreement do not so provide, are designated or otherwise admitted as members by the assignee (or other person having only the rights of an assignee under G.S. 57C-5-02 who controls the interest) of the person who was the last member of the limited liability company; or

(5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

SECTION 7. G.S. 57C-6-06.1 is repealed.

SECTION 8. G.S. 57C-10-03 reads as rewritten:

"**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

(a) The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.

(b) The law of estoppel shall apply to this Chapter.

(c) The law of agency shall apply under this Chapter.

(d) This Chapter shall not be construed so as to impair the obligations of any contract existing when this Chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this Chapter takes effect.

(e) Except as otherwise provided in this Chapter, it is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

SECTION 9. This act becomes effective January 1, 2010.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 709 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 709:
Home Improvement Fraud

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III, if favorable, Appropriations	**Date:**	June 3, 2009
Introduced by:	Sen. Allran	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 709 would make it a crime to use any false pretense to cause another to enter into a contract for home repair, or to damage any property of another to cause that person to enter into a contract for home repair. The crime of home improvement fraud would be punishable as a Class H felony for a first offense, a Class F felony for a second offense, and a Class C felony for a third or subsequent offense.***

CURRENT LAW: G.S. 14-100 (Obtaining property by false pretenses) makes it a crime for a person to make a false representation regarding a past, existing, or future event that is intended to and does deceive another person and by which the person making the false representation obtains or attempts to obtain anything of value from the other person. This is a Class H felony[1] if the value of the property is less than $100,000 and a Class C felony if the value of the property is $100,000 or more.

G.S. 14-104 (Obtaining advances under promise to work and pay for same) makes it a crime to obtain any advances of any description from another person under color of promise to work where the person making the promise to work intends to defraud another and willfully fails to commence or complete the work as agreed. A violation of this law is a Class 2 misdemeanor.[2]

G.S. 14 -127 (Willful and wanton injury to real property) makes it a Class 1 misdemeanor to willfully damage, injure or destroy real property.[3]

G.S. 14-160 (Willful and wanton injury to personal property) makes it a Class 2 misdemeanor to willfully injure personal property valued $200 or less. It is a Class 1 misdemeanor if the property is valued at over $200.

BILL ANALYSIS:

Section 1 creates the new criminal offense of "home improvement fraud". A first offense would be punishable as a Class H felony. A second offense would be punishable as a Class F felony[4]. A third or subsequent offense would be punishable as a Class C felony. A court could also order restitution, in its discretion, in addition to the other penalties.

The offense occurs in one of two situations:

---

[1] The mandatory minimum sentence for a Class H felony for a defendant with no prior convictions is 4 to 8 months of either community, intermediate or active punishment. The mandatory minimum sentence for a Class C felony for a defendant with no prior convictions is 44 to 92 months of active punishment.

[2] The mandatory minimum sentence for a Class 2 misdemeanor for a defendant with no prior convictions is 1 to 30 days of community punishment.

[3] The mandatory minimum sentence for a Class 1 misdemeanor for a defendant with no prior convictions is 1 to 45 days of community punishment.

[4] The mandatory minimum sentence for a Class F felony for a defendant with no prior convictions is 10 to 20 months of intermediate or active punishment.

1. A contractor knowingly uses a false pretense to induce another person to enter into a contract for home improvements. The false pretense could be as to any past or present fact or any future fulfillment of an event.
2. A contractor knowingly damages another person's property with the intent to induce the person to enter into a home improvement contract.

A "contractor" is any person who has agreed to perform any home improvement in exchange for compensation. The term includes any employee or agent of the contractor as well as any subcontractor of the contractor, but it does not include a person who is a licensed general contractor under Article 1 of Chapter 87 of the General Statutes.

A "home improvement" is any alteration, repair, modification or improvement to the dwelling house or any structure within the cartilage and any other structure designed to house or secure any activity or property.

The proposed new criminal law differs from "Obtaining Property by False Pretenses" in that it only applies to fraudulent home improvement situations and the punishment levels depend upon whether the defendant is a repeat offender rather than the amount of damage to the victim.

EFFECTIVE DATE: The act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

S709-SMRQ-97(e2) v1

**Kory Goldsmith, Counsel to Senate Judiciary II, significantly contributed to this summary.*

§ 14-100. Obtaining property by false pretenses.

(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.

(b) Evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.

(c) For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization.

§ 14 104. Obtaining advances under promise to work and pay for same.

If any person, with intent to cheat or defraud another, shall obtain any advances in money, provisions, goods, wares or merchandise of any description from any other person or corporation upon and by color of any promise or agreement that the person making the same will begin any work or labor of any description for such person or corporation from whom the advances are obtained, and the person making the promise or agreement shall willfully fail, without a lawful excuse, to commence or complete such work according to contract, he shall be guilty of a Class 2 misdemeanor.

§ 14-127. Willful and wanton injury to real property.

If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.

§ 14-160. Willful and wanton injury to personal property; punishments.

(a) If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.

(b) Notwithstanding the provisions of subsection (a), if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 709
Judiciary II Committee Substitute Adopted 5/4/09

Short Title: Home Improvement Fraud. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-104.1. Home improvement fraud; penalties.**

(a) The following definitions apply in this section:

(1) Contractor. – A person who has agreed to perform any home improvement in exchange for compensation, including any agent or employee of the person. The term includes a subcontractor who has agreed to perform any home improvement. The term does not include a person who is licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes.

(2) Home improvement. – Any alteration, repair, modification, or other improvement to any dwelling house or to any structure within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property.

(b) Home improvement fraud is committed when a contractor knowingly engages in any of the following actions:

(1) The use by a contractor of any false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, with the intent to cause any other person to enter into a home improvement contract.

(2) The damaging of any property of any person by a contractor with the intent to induce that person to enter into a home improvement contract.

(c) A person convicted of home improvement fraud shall be punished as follows:

(1) For a first offense a person is guilty of a Class H felony.

(2) For a second offense a person is guilty of a Class F felony.

(3) For a third or subsequent offense a person is guilty of a Class C felony.

(d) In addition to the penalties imposed under subsection (c) of this section, the court, in its discretion, may also order restitution."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 922 A BILL TO BE ENTITLED AN ACT TO EXCLUDE RESEARCH THAT CANNOT BE CONDUCTED WITHIN THE STATE FROM ELIGIBILITY CALCULATIONS FOR GRANTS FROM THE ONE NORTH CAROLINA SMALL BUSINESS PROGRAM.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 922
Finance Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/6/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S922-PCS15300-RN-35

Short Title: Modify SBIR/STTR Grant Requirements. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE RESEARCH THAT CANNOT BE CONDUCTED WITHIN THE STATE FROM ELIGIBILITY CALCULATIONS FOR GRANTS FROM THE ONE NORTH CAROLINA SMALL BUSINESS PROGRAM AND TO EXEMPT FROM RULE MAKING THE COMMUNITY COLLEGES SYSTEM OFFICE IN DEVELOPING CRITERIA AND GUIDELINES ADMINISTERING THE CUSTOMIZED TRAINING PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.80(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State to the extent practical and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal."

SECTION 2. G.S. 143B-437.81(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State to the extent practical and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal."

SECTION 3. G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.

(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3A of Chapter 135 of the General Statutes.

(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.

(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.

(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).

(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.

(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.

(14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.

(15) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve.

(16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.

(17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.

(19) The Community Colleges System Office in developing criteria and guidelines administering the Customized Training Program under G.S. 115D-5.1."

SECTION 4. G.S. 115D-5.1(g) reads as rewritten:

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

SECTION 5. This act is effective when it becomes law.

SENATE BILL 922:
Modify SBIR/STTR Grant Requirements

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 10, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S922-CSRN-35		Committee Co-Counsel

SUMMARY: ***Senate Bill 922 modifies Small Business Innovative Research and Small Business Technology Transfer Research grants to provide that at least 51% of the grantee's research be conducted in North Carolina to the extent practical. The Proposed Committee Substitute (PCS) exempts from rulemaking the Community Colleges System Office in developing criteria and guidelines administering the customized training program under G.S. 115D-5.1.***

[As introduced, this bill was identical to H1574, as introduced by Reps. Gibson, Wainwright, Jones, which is currently in House Science and Technology, if favorable, Finance.]

CURRENT LAW: The North Carolina Board of Science and Technology administers two programs in the North Carolina Small Business Program.

- North Carolina SBIR/STTR Incentive Program. – Under this program, the Board may award grants to offset costs associated with applying for a Phase I grant from either the United States Small Business Administration for Small Business Innovative Research (SBIR) or Small Business Technology Transfer Research (STTR). The maximum grant under this program is $3,000.
- North Carolina SBIR/STTR Matching Funds Program. – Under this program, the Board may award grants to match funds received by a business as a SBIR or STTR Phase I award. The grant may not exceed $100,000.

To be eligible for the grants, a business must be a for-profit, North Carolina-based business and at least 51% of the research described in its grant proposal must be conducted in North Carolina.

The Administrative Procedure Act establishes a uniform system of administrative rulemaking and adjudicatory procedures for agencies. The current exemptions from rulemaking are found in G.S. 150B-1(d).

BILL ANALYSIS: Senate Bill 922 modifies Small Business Innovative Research and Small Business Technology Transfer Research grants to provide that at least 51% of the grantee's research be conducted in North Carolina *to the extent practical.* The PCS exempts from rulemaking the Community Colleges System Office in developing criteria and guidelines administering the Customized Training Program under G.S. 115D-5.1.

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

S922-SMRN-91(CSRN-35) v1

Cindy Avrette contributed substantially to the drafting of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 922
Finance Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/6/09

Short Title: Modify SBIR/STTR Grant Requirements. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE RESEARCH THAT CANNOT BE CONDUCTED WITHIN THE STATE FROM ELIGIBILITY CALCULATIONS FOR GRANTS FROM THE ONE NORTH CAROLINA SMALL BUSINESS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.80(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State <u>to the extent practical</u> and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal."

SECTION 2. G.S. 143B-437.81(b) reads as rewritten:

"(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

(1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.

(2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

(3) The business must satisfy all federal SBIR/STTR requirements.

(4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

(5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State to the extent practical and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.

(6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 1029 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on INSURANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1029
Commerce Committee Substitute Adopted 5/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1029-PCS15301-RO-59

Short Title: PEO Amendments. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS, AND TO CLARIFY THE APPLICATION OF TAX CREDITS AND OTHER INCENTIVES TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

(1) If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars ($100,000).

(2) If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner may require."

SECTION 2. G.S. 58-89A-105 is amended by adding a new subsection to read:

"(a1) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees."

SECTION 3. G.S. 58-89A-31 reads as rewritten:

"**§ 58-89A-31. Tax credits and other incentives.**

For purposes of determination of tax credits and other economic incentives provided by the State or a political subdivision and based on employment, covered employees are considered employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client. Each professional employer organization must provide, upon request by a client, employment information that is required by any agency or department of the State or a political subdivision responsible for administration of any tax credit or economic incentive and that is necessary to support a request, claim, application, or other action by a client seeking

the tax credit or economic incentive. For purposes of this section, the term "political subdivision" has the same meaning as in G.S. 162A-65(a)(8)."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 1029: PEO Amendments

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Insurance	**Date:**	June 10, 2009
Introduced by:	Sen. Bingham	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition S1029-CSRO-59		

SUMMARY: ***Senate Bill 1029 clarifies that the bond posted by an applicant for a professional employer organization (PEO) license who was licensed prior to October 1, 2008 shall be in the amount of $100,000. The bill does not change the bonding requirements for applicant's that were licensed on or after that date.***

The PCS clarifies that tax credits and other economic incentives provided by a political subdivision of the State should be treated in the same manner as incentives provided by the State.

CURRENT LAW: A PEO is defined under G.S. 58-89A-5(14) as a "person that offers professional employer services." As provided in G.S. 58-89A-5(16), professional employer services means "an arrangement by which employees of a [PEO] are assigned to work at a client company and in which employment responsibilities are in fact shared by the [PEO] and the client company." PEOs typically provide services to companies such as the management of payroll and health benefits.

In 2008, the General Assembly amended the Professional Employer Organization Act to require an applicant for licensure to post a bond in an amount equal to 5% of the applicant's prior year's total NC wages, benefits, workers compensation premiums, and unemployment contributions, but not greater than $500,000, or such greater amount as the Commissioner may require. This change became effective October 1, 2008.

Prior to this change, applicants were required to post a bond in the amount of $100,000.

BILL ANALYSIS: Section 1 of the bill clarifies that PEOs licensed prior to October 1, 2008 (the effective date of the 2008 changes) must post a bond in the amount of $100,000, as required prior to the 2008 change. The new bonding requirements would only apply to those applicants who were not already licensed when the 2008 changes took effect.

Amendments to the Act in 2008 also deleted language allowing a client company of a PEO to sponsor and maintain employee benefit plans for the benefit of assigned employees.

Section 2 of the bill reinstates this language.

Section 3 amends the law governing tax credits and other economic incentives provided by the State and based on employment. The law provides that the client company is entitled to the incentive and covered employees are considered employees solely of the client. Section 3 clarifies that incentives provided by a political subdivision of the State are to be treated in the same manner as incentives provided by the State.

EFFECTIVE DATE: Senate Bill 1029 is effective when it becomes law.

Tim Hovis, counsel to Senate Commerce, substantially contributed to this summary.

S1029-SMRO-119(CSRO-59) v1

SENATE BILL 1029
Commerce Committee Substitute Adopted 5/4/09

Short Title: PEO Amendments. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

(1) If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars ($100,000).

(2) If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner may require."

SECTION 2. G.S. 58-89A-105 is amended by adding a new subsection to read:

"(a1) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees."

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

Brenda Lee (Rep. Dickson)

m: Brenda Lee (Rep. Dickson)
Sent: Tuesday, June 16, 2009 3:48 PM
To: Rep. Beverly Earle; Sen. Stan Bingham; Sen. Josh Stein; Sen. David Hoyle
Cc: Ruth Merkle (Rep. Farmer-Butterfield); Ann Raeford (Rep. Earle); Lisa Brown (Rep. England); Forrest Gilliam (Rep. Rapp); Judy Chriscoe (Sen. Bingham); Candace Finley (Sen. Stein); Penny Williams (Sen. Hoyle)
Subject: Corrected Committee Notice - House Commerce, Small Business and Entrerpreneurship Committee Meeting - Wednesday, June 17, 2009
Importance: High

CORRECTED NOTICE

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 17, 2009
TIME: 1:00 pm
ATION: 1228 LB
MENTS: Remove HB 1151

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
~~HB 1151~~	~~Res. Lead-Based Paint Hazards/Renovations.~~	~~Representative Farmer-Butterfield~~ ~~Representative Earle~~ ~~Representative England, M.D.~~ ~~Representative Rapp~~
SB 69	CCPS Wrecker Service Fee Rules.	Senator Bingham
SB 764	Real Estate/Settlement Agent Embezzlement.	Senator Stein
SB 1006	Withholding on Contractors Identified by ITIN.	Senator Hoyle
SB 1018	Ban Certain Single-Use Bags.	Senator Stein

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:40 p.m. on **June 16, 2009.**

Principal Clerk
ing Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 17, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
SB 69	CCPS Wrecker Service Fee Rules.	Senator Bingham
SB 764	Real Estate/Settlement Agent Embezzlement.	Senator Stein
SB 1006	Withholding on Contractors Identified by ITIN.	Senator Hoyle
SB 1018	Ban Certain Single-Use Bags.	Senator Stein

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:00 p.m. on **June 16, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, June 17, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 69	CCPS Wrecker Service Fee Rules	Senator Bingham
SB 764	Real Estate/Settlement Agent Embezzlement	Senator Stein
SB 1018	Ban Certain Single-Use Bags	Senator Stein
SB 1006	Withholding on Contractors Identified by ITIN	Senator Hoyle

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, June 17, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, June 17, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Goforth, Starnes, Stewart, Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Harrell, Holloway, Mills, Owens, Pierce, Samuelson, Tarleton, Warren, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

Representative Wilkins, Vice Chair presided for Representative Dickson, Chair until her return from a Ways and Means Committee meeting in which she presented a bill. Representative Wilkins called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

Representative Wilkins announced the following bills for consideration:

SB 1006 - A BILL TO BE ENTITLED AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN). Sponsor: Senator Hoyle
Representative Gibson presented the bill for Senator Hoyle. He explained that SB 1006 would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation. He said that when the Department of Revenue did their sampling of ITIN taxpayers, they found out that less than who should have been were paying their taxes appropriately. He said that in our economy people who owe taxes should pay taxes, especially people who do not have a social security number. Representative Gibson supported the bill, said that is had been thoroughly reviewed by the Department of Revenue and interest groups, and he knew of no opposition. Discussion followed. Alan Woodard, NC Department of Revenue appeared before the Committee and answered their questions. Representative Tarleton moved for a favorable report for SB 1006 with a re-referral to the committee on Finance. The motion passed.

Representative Dickson returned to preside over the Committee and thanked Representative Wilkins for presiding in her absence.

The Chair then announced the following bills for consideration:

SB 69 - A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY FROM REGULATING THE FEE AMOUNT CHARGED BY A WRECKER SERVICE THAT PARTICIPATES IN THE ROTATION WRECKER SYSTEM FOR THE STATE HIGHWAY PATROL FOR TOWING, REMOVAL, RECOVERY, AND STORAGE. Sponsor: Senator Bingham
Representative Goforth moved for adoption of the proposed House committee substitute, and it was adopted. Senator Bingham presented SB 69. Colleen Kochanek, representing the Towing and Recovery Professionals of NC appeared before the Committee and spoke in favor of the bill. Thomas Caves, NC Department of Crime Control and Public Safety, spoke in favor of the bill. Discussion followed. Representative Cole moved for a favorable report for the proposed House committee substitute for SB 69, unfavorable to the original bill with a re-referral to the Committee on Finance. The motion passed.

SB 764 - A BILL TO BE ENTITLED AN ACT AMENDING THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.
Sponsor: Senator Stein
Senator Stein presented SB 764. He said that it came at the request of the NC Bar Association's Real Estate Counsel. The bill seeks to clarify any ambiguity that exists in the code as it relates to embezzlement. Representative Allen moved for a favorable report for SB 764 with a recommendation for re-referral to Judiciary I. The motion passed.

SB 1018 - A BILL TO BE ENTITLED AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.
Sponsor: Senator Stein
Representative Harrell moved for adoption of the proposed House committee substitute #2, and it was adopted. Senator Stein wanted to clarify what the bill did not do: (1) does not ban plastic bags statewide. Instead, it takes a substantially more targeted approach by essentially piloting a plan in the most environmentally sensitive part of our state on the Outer Banks—an area in which tourism is a critical element of the economic survival of the economy there. He then spoke of what the bill will do in those narrow parts of the state: (1) prohibits retailers from providing customers standard issue plastic bags except in limited circumstances (fish, meat, produce or poultry). Instead, the bill encourages consumers to use reusable bags (either canvas or thick plastic reusable bags) by having the retailers give an incentive to the consumers to bring their own reusable bags. The incentive could be a refund or a coupon applicable for later use. He thanked the Retail Merchants for their diligence and work on the bill, and said they are no longer opposed to the legislation. Representative Spear appeared before the Committee. He said three counties were affected by this legislation. He represents two of them, and Representative Owens represents one. Representative Spear said that what is sold on the Outer Banks of North Carolina is travel and tourism—the beauty of the area which is why the legislation is so important to them. Plastic bags present problems for estuaries, marine life, storm drains, and they are unsightly. There are approximately 7 million visitors per year to the Outer Banks, and approximately 6 million bags are used. Representative Spear said the legislation would make a significant difference and requested the Committee's support.

Discussion followed. Representative Floyd moved for a favorable report. The motion passed.

The meeting adjourned at 1:45 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 17, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sean Quinn	Sierra Club
Drew Ball	Sierra Club
Grey Walters	Intern - Rep. Samuelson
Danielle Nathan	Sierra Club
Luke Brown	
ChanseMyers	
Christian Morrison	
Sid Nixon	
DanConrad	NCCN

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 17, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Schorr Johnson	Sen Basnight's staff
Chris	Progress
Beth Bonnell	"
Victoria Hawkins	Bode & Assoc.
Bob Sperry	NCFA
Bobby Distler	TRPNC
Steve Bowman	TRPNC
James Edmonson	TRPNC
Belinda Harris	TRPNC
Karen Rose	TRPNC
Sara Nelson	NCDOC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 17, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Cady Thomas	NCAR
David Bowy	MWC
Bragg Thorpe	NFIB
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
Amy Fullbright	Hunton & Williams
Kate Mitt	DENR
Scott Mouw	DENR
Elizabeth Bises	DENR
Alexandra Embory	DENR
Mamie Watts	CCAS

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 17, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Crouch	NC Bar Association
Jennifer Cohen	IFNC
	RAMC
Allison Waller	Charlotte Chamber
Bill	
Stan Poe	VZ
Molly D. Scott	Sierra Club
Walt Church	Ret State Rep. 86th House Dist
Andrew Meehan	NCAEC
Rick Zechini	NC Assoc. of Realtors

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship June 17, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Ken Melton	K.M.A.
Ian Palmquist	CNC

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HOUSE PAGES

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NAME OF COMMITTEE ENTREPRENEURSHIP DATE 6-17-09

1. Name: Brantley Craft
   County: Guilford
   Sponsor: Harrison
2. Name: Meagan Laframboise
   County: Gaston
   Sponsor: Wil Nuemann
3. Name: Will Edwards
   County: Columbus
   Sponsor: Rep. Hill
4. Name: Kayla Fowler
   County: Surry
   Sponsor: Hackney
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: EARL GOKER
2. Name: CHARLES WILLIAMS
3. Name: FRANK PREVD
4. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 1006 A BILL TO BE ENTITLED AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 1006:
Withholding on Contractors Identified by ITIN

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 2, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***Senate Bill 1006 would require a person who pays compensation other than wages to someone whose taxpayer identification number is an ITIN as opposed to a social security number to withhold 4% of the compensation. The bill would become effective January 1, 2010.***

CURRENT LAW: North Carolina taxes income derived from businesses, trades, and occupations carried on in this State. An employer is required to deduct and withhold from an employee's wages the State income taxes payable by the employee on those wages and deposit the withheld taxes with the Department of Revenue. A person who pays more than $1,500 during a calendar year as compensation other than wages for personal services performed in this State by a nonresident individual or entity must withhold 4% of the payment and remit the withheld taxes to the Department. The withheld taxes are credited to the employee or to the nonresident individual or entity from whom they were withheld. People from whom taxes have been withheld receive credit for the withheld taxes by filing a North Carolina income tax return; any excess is refunded to the taxpayer.

BILL ANALYSIS: Senate Bill 1006 would require a person who, in the regular course of a trade or business, pays more than $1,500 during a calendar year as compensation other than wages to an ITIN holder to withhold 4% of the payment and remit the withheld taxes to the Department. An ITIN holder is defined as a person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN). An ITIN is issued to a person who is required to have a taxpayer identification number but is not eligible to obtain a social security number. A person may obtain a social security if the person has been lawfully admitted to the United States for permanent residence or under other immigration categories that authorize employment in the United States.

A payer required to withhold taxes from compensation paid to an ITIN holder must file a return and pay the withheld taxes to the Department. The withheld taxes are payable quarterly, monthly, or semiweekly depending upon the average amount withheld by a payer each month. If the amounts withheld average less than $250 a month, the payments are due quarterly. If the amounts withheld average at least $250 but less than $2,000, the payments are due monthly. All other payments are due by the date set under the Internal Revenue Code for payment of federal employment taxes attributable to the same wages. A payer who withholds taxes from compensation paid to an ITIN holder must give the person a written statement by January 31 following the end of the calendar year that sets out the total amount of compensation paid during the calendar year to the person and the total amount deducted and withheld.

EFFECTIVE DATE: The bill becomes effective January 1, 2010.

BACKGROUND: The Department of Revenue requested this change in the law to better enable it to collect State income taxes on amounts paid to ITIN holders who are not employees.[1] The Department reviewed 1099 Forms available through the Federal Data Exchange Program with the Internal Revenue Service. A review of the data indicated a number of North Carolina ITIN holders as the recipients of 1099 miscellaneous payments. Often, the ITIN holders receiving the compensation identified on the

[1] The withholding of taxes due on wages paid to employees is covered under current law.

1099 forms were illegal immigrants. Attempted collections of these amounts by the Department resulted in less than 10% of the amount of tax due. The Department believes that a withholding requirement on non-employee compensation paid to ITIN holders will insure the tax is properly paid on income earned in the State. The withholding requirement could apply to an array of businesses but one of the predominant ones would be the construction trades.

S1006-SMRB-24(e3) v1

SENATE BILL 1006
Finance Committee Substitute Adopted 5/6/09
Third Edition Engrossed 5/12/09

Short Title: Withholding on Contractors Identified by ITIN. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.1 reads as rewritten:

"**§ 105-163.1. Definitions.**

The following definitions apply in this Article:

(1) Compensation. – Consideration a payer pays ~~a~~ to any of the following:
   a. A nonresident individual or nonresident entity for personal services performed in this State.
   b. An ITIN holder who is a contractor and not an employee for services performed in this State.

~~(2) Contractor. Either of the following:~~
   ~~a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~
   ~~b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~

(3) Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.

(4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
   a. Controls the payment of wages to an individual for services performed for another.

b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
c. Pays wages on behalf of a unit of government that is not located in this State.
d. Pays wages for any other reason.

(6) Individual. – Defined in G.S. 105-134.1.

(6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.

(6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).

(7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(7a) Nonresident contractor. – Either of the following:
a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

(8) Nonresident entity. – Any of the following:
a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

(9) Pass-through entity. – Defined in G.S. 105-228.90.

(10) Payer. – A person who, in the course of a trade or business, pays ~~a~~ compensation to any of the following:
a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.
b. An ITIN holder who is a contractor and not an employee for services performed in this State.

(11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.

(11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.

(12) Taxable year. – Defined in section 441(b) of the Code.

(13) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include either of the following:

a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).

b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.

(14) Withholding agent. – An employer, a pension payer, or a payer."

SECTION 2. G.S. 105-163.3 reads as rewritten:

"**§ 105-163.3. Certain payers must withhold taxes.**

(a) Requirement. – Every payer who pays ~~a contractor~~ more than one thousand five hundred dollars ($1,500) during a calendar year ~~shall~~ to either a nonresident contractor or an ITIN contractor must deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

(c) ~~Returns; Due Date.~~ Returns. – A payer ~~shall~~ must file a return with the Secretary ~~on a form prepared by the Secretary and shall provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the payer pays compensation to a contractor. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.~~ and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.

(d) Annual ~~Statement; Report to Secretary.~~ Statement and Report. – A payer required to deduct and withhold from a contractor's compensation under this section ~~shall furnish to the contractor duplicate copies of~~ must give the contractor a written statement ~~showing the following:~~ that sets out the following information and any other information required by the Secretary:

(1) The payer's name, address, and taxpayer identification number.

(2) The contractor's name, address, and taxpayer identification number.

(3) The total amount of compensation paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar ~~year. If~~ year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the ~~statement,~~ statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor. ~~The Secretary may require the payer to include additional information on the statement.~~

Each payer ~~shall~~ must file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from

payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer ~~shall~~ must obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer ~~shall~~ must obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer ~~shall~~ must obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer ~~shall~~ must obtain the partnership's address and taxpayer identification number. The payer ~~shall~~ must retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section ~~must:~~must take the following actions:

(1) Not report the amount refunded on the annual statement required by subsection ~~(d); and~~(d) of this section.

(2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 69 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY FROM REGULATING THE FEE AMOUNT CHARGED BY A WRECKER SERVICE THAT PARTICIPATES IN THE ROTATION WRECKER SYSTEM FOR THE STATE HIGHWAY PATROL FOR TOWING, REMOVAL, RECOVERY, AND STORAGE.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill 1 and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 69
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S69-PCS15305-RO-60

Short Title: CCPS Wrecker Service Fee Rules. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN PARTS OF A RULE ADOPTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY RELATING TO ROTATION WRECKER SERVICES VOID AND UNENFORCEABLE AND TO DIRECT THE SECRETARY TO ADOPT RULES CONSISTENT WITH THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the authority of the Secretary of Crime Control and Public Safety to adopt rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the amendments to 14A NCAC 09H.0321(10), which became effective on July 18, 2008, are void and unenforceable to the extent such amendments:

(1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.

(2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.

(3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

Notwithstanding the limitations set out in this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions.

SECTION 2. The Secretary of Crime Control and Public Safety shall adopt amendments to 14A NCAC 09H.0321(10) to conform to the requirements of this act.

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

SENATE BILL 69:
CCPS Wrecker Service Fee Rules

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 16, 2009
Introduced by:	Sen. Bingham	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition S69-CSRO-60		

SUMMARY: ***The PCS for Senate Bill 69 makes certain parts of a rule adopted by the Department of Crime Control and Public Safety relating to Highway Patrol rotation wrecker services void and unenforceable. The bill further directs the Secretary to adopt a new rule that conforms to the requirements of this act.***

CURRENT LAW:

Under current law, the Secretary of Crime Control and Public Safety is authorized to make all necessary orders, rules, and regulations for the organization, assignment and conduct of the State Highway Patrol, subject to approval of the Governor.

In 2008, the Secretary adopted rules governing the rotation of wrecker services used by the State Highway Patrol. The rules included the following requirements related to fees:

- Towing, storage, and related fees charged on a Highway Rotation call may not be greater than fees charged for the same service for non-rotation calls.
- A price list must be established and kept on file, and resubmission of the price list is limited to an annual open enrollment period.
- Vehicle storage fees may not exceed the $10 per day amount set by statute for vehicles seized under the DWI forfeiture provisions.
- Night and weekend fees may not exceed regular business hour fees by more that 10%.
- Operators with fees that exceed the median fee in the area by more than 15% will be disqualified from the rotation system.
- Fees must remain in effect for the calendar year in which they are approved and may not be increased.

BILL ANALYSIS:

Senate Bill 69 provides that the rule is void and unenforceable to the extent that it:

1. Limits submission of applications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.
2. Limits vehicle storage fees to the statutory amount set for vehicles seized under the DWI forfeiture provision.
3. Requires that fees not exceed the median fee in the area by 15%.

However, the rule may require that when responding to a rotation wrecker call, the wrecker service must charge reasonable fees that do not exceed the charges for similar nonrotation service calls.

Section 2 of the bill directs the Secretary of Crime Control and Public Safety to amend the rule to conform to the requirements of this act.

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

S69-SMRO-125(CSRO-60) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 69
Commerce Committee Substitute Adopted 5/12/09

Short Title: CCPS Wrecker Service Fee Rules. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY FROM REGULATING THE FEE AMOUNT CHARGED BY A WRECKER SERVICE THAT PARTICIPATES IN THE ROTATION WRECKER SYSTEM FOR THE STATE HIGHWAY PATROL FOR TOWING, REMOVAL, RECOVERY, AND STORAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-187.4. Wrecker service fees.**

(a) Notwithstanding the authority of the Secretary of Crime Control and Public Safety to promulgate rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the July 18, 2008, amendments to the Highway Patrol Rotation Wrecker Regulations, as published in 14A NCAC 09h.0321(10), are disallowed to the extent such amendments:

(1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.

(2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.

(3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

(b) Notwithstanding the limitations set out in subsection (a) of this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 764 A BILL TO BE ENTITLED AN ACT AMENDING THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 764:
Real Estate/Settlement Agent Embezzlement

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	June 17, 2009
Introduced by:	Sen. Stein	**Prepared by:**	Drupti Chauhan*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 764 would amend the Good Funds Settlement Act to clarify that a settlement agent is guilty of embezzlement in instances where it cannot be shown that the funds where embezzled from a specific party.***

CURRENT LAW: Under G.S. 14-90, a person is guilty of embezzlement if that person fraudulently, or knowingly and willfully, uses for a purpose other than that for which the defendant received it, the property of another held by the defendant under his or her care. Punishment is a Class C felony if the value of the property is $100,000 or more, and a Class H felony if the value of the property is below $100,000. [1]

BILL ANALYSIS: Senate Bill 764 would amend the Good Funds Settlement Act to specifically state that whether or not the funds are proved to belong to a specific party, settlement agents are guilty of embezzlement under G.S. 14-90 if the settlement agent embezzles or fraudulently or knowingly and willfully misapplies or converts to the settlement agent's own use, or takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to the settlement agent's own use, the closing funds or any portion of the closing funds except that portion which is the settlement agent's fees and expenses.

EFFECTIVE DATE: December 1, 2009, and applies to offenses on or after that date.

§ 14-90. Embezzlement of property received by virtue of office or employment.
If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

[1] The mandatory minimum sentence for a Class H felony for a defendant with no prior convictions is 4 to 8 months of either community, intermediate or active punishment. The mandatory minimum sentence for a Class C felony for a defendant with no prior convictions is 44 to 92 months of active punishment.

S764-SMRQ-105(e2) v1

**Erika Churchill, Counsel to Senate Judiciary I, significantly contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 764
Judiciary I Committee Substitute Adopted 5/7/09

Short Title: Real Estate/Settlement Agent Embezzlement. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding a new section to read as follows:

"**§ 45A-8. Embezzlement of closing funds by settlement agent.**

All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity. A settlement agent in the disbursement of settlement proceeds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction. Any settlement agent who shall embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use, or shall take, make away with, or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use the closing funds or any portion of the closing funds, except those closing funds representing the settlement agent's fees and expenses, shall be guilty of embezzlement under G.S. 14-90 regardless of whether the embezzled, misapplied, or converted closing funds have been proved to belong to a specific party."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ House Committee Substitute # 1 for

SB 1018 A BILL TO BE ENTITLED AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.

☒ With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1018

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/9/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1018-PCS75272-MH-10

Short Title: Ban Certain Single-Use Bags. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2G. Plastic Bag Management.

"**§ 130A-309.120. Findings.**

The General Assembly makes the following findings:

(1) Distribution of plastic bags by retailers to consumers for use in carrying, transporting, or storing purchased goods has a detrimental effect on the environment of the State.

(2) Discarded plastic bags contribute to overburdened landfills, threaten wildlife and marine life, degrade the beaches and other natural landscapes of North Carolina's coast, and, in many cases, require consumption of oil and natural gas during the manufacturing process.

(3) It is in the best interest of the citizens of this State to gradually reduce the distribution and use of plastic bags.

(4) Environmental degradation is especially burdensome in counties with barrier islands where soundside and ocean pollution are more significant, where removing refuse from such isolated places is more difficult and expensive, where such refuse deters tourism, and where the presence of a National Wildlife Refuge or National Seashore shows that the federal government places special value on protecting the natural environment in that vicinity.

(5) The barrier islands are most relevant in that they are where sea turtles come to nest. North Carolina has some of the most important sea turtle nesting areas on the East Coast, due to the proximity of the islands to the Gulf Stream. Plastic bag debris can be harmful to sea turtles and other land and marine life. The waters adjacent to the barrier islands, because they serve as habitat for the turtles, are particularly sensitive to waterborne debris pollution.

(6) Inhabitated barrier islands are visited by a high volume of tourists and therefore experience a high consumption of bags relative to their permanent population due to large numbers of purchases from restaurants, groceries, beach shops, and other retailers by the itinerant tourist population.

(7) Barrier islands are small and narrow, and therefore the comparative impact of plastic bags on the barrier islands is high.

"**§ 130A-309.121. Definitions.**

As used in this Part, the following definitions apply:

(1) Plastic bag. – A carryout bag composed primarily of thermoplastic synthetic polymeric material, which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.

(2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in G.S. 105-164.3, to consumers.

(3) Recycled paper bag. – A paper bag that meets all of the following requirements:

a. The bag is manufactured from one hundred percent (100%) recycled content, including postconsumer content, postindustrial content, or a mix of postconsumer and postindustrial content.

b. The bag displays the words "made from recycled material" and "recyclable."

(4) Retail chain. – Five or more stores located within the State that are engaged in the same general field of business and (i) conduct business under the same business name or (ii) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

(5) Retailer. – A person who offers goods for sale in this State to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods and (i) has more than 5,000 square feet of retail or wholesale space or (ii) is one of a retail chain.

(6) Reusable bag. – A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse or a bag made of cloth or other machine washable fabric with handles.

"**§ 130A-309.122. Certain plastic bags banned.**

No retailer shall provide customers with plastic bags unless the bag is a reusable bag, or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of the following items:

(1) Fresh fish or fresh fish products.

(2) Fresh meat or fresh meat products.

(3) Fresh poultry or fresh poultry products.

(4) Fresh produce.

"**§ 130A-309.123. Substitution of paper bags restricted.**

(a) A retailer subject to G.S. 130A-309.122 may substitute paper bags for the plastic bags banned by that section, but only if all of the following conditions are met:

(1) The paper bag is a recycled paper bag.

(2) The retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (i) a cash refund; (ii) a store coupon or credit for general store use; or (iii) a value or reward under the retailer's customer loyalty or rewards program for general store use. The amount of the incentive shall be equal to or greater than the cost to the retailer of providing a recycled paper bag,

multiplied by the number of reusable bags filled with the goods purchased by the customer.

(b) Nothing in this Part shall prevent a retailer from providing customers with reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers.

(c) Notwithstanding subsection (a) of this section, a prepared foods retailer may package prepared foods in a recycled paper bag, regardless of the availability of a reusable bag, in order to comply with food sanitation or handling standards or best practices.

"**§ 130A-309.124. Required signage.**

A retailer subject to G.S. 130A-309.122 other than a prepared foods retailer shall display a sign in a location viewable by customers containing the following notice: "[county name] County discourages the use of single-use plastic and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use." The name of the county where the retailer displaying the sign is located should be substituted for "[county name]" in the language set forth in this section.

"**§ 130A-309.125. Applicability.**

(a) This Part applies only in a county which includes a barrier island or barrier peninsula, in which the barrier island or peninsula meets both of the following conditions:

(1) It has permanent inhabitation of 200 or more residents and is separated from the North Carolina mainland by a sound.

(2) It contains either a National Wildlife Refuge or a portion of a National Seashore.

(b) Within any county covered by subsection (a) of this section, this Part applies only to an island or peninsula that both:

(1) Is bounded on the east by the Atlantic Ocean.

(2) Is bounded on the west by a coastal sound."

SECTION 2. G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars ($100.00) for a first violation; two hundred dollars ($200.00) for a second violation within any 12-month period; and five hundred dollars ($500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be

filed within three years of the date the final agency decision or court order was served on the violator.

...."

SECTION 3. This act becomes effective September 1, 2009, and applies to retail sales made on or after that date.

Ban on Certain Single Use Bags | S1018

Daily, thousands of North Carolinians move through the checkout line at their local grocery store, choose plastic and return home with meals for the week in tow. These plastic bags are produced with virgin petroleum that could be used to heat homes, power cars and decrease our dependency on foreign oil (1).

Plastic bags are lightweight and non-biodegradable. Those that are not recycled or disposed of properly have little trouble finding their way to our beaches and coastal waters. The proliferation of plastic bags as litter hurts our tourist economies. Worse, plastic bags are remarkably detrimental to endangered and threatened animal life. These effects are especially noticeable in North Carolina's Outer Banks, specifically Dare, Hyde, and Currituck counties.

S1018 calls attention to and solves this problem by banning single use plastic bags in chain stores and large retail spaces. Instead, retailers would be required to offer recyclable paper bags, reusable plastic bags or encourage consumers to provide their own sustainable solution.

Dare, Hyde and Currituck counties serve as ideal pilot counties for such a program, as they are home to some of the most important sea turtle nesting areas, all of which are put in danger when suffocating plastic bags are allowed to be ill handled. The Outer Banks also has a vested interest in maintaining the area's natural beauty, both for residents and visiting tourists that sustain the local economy.

• Regardless of party affiliation, the public supported a more wide-ranging plastic bag ban than the current version of the bill, with Democrats 51/26 in support, independents with 54/32 in support, and Republicans with 39/36 supporting (2).

Sea turtles often mistake plastic bags for jellyfish.

• The measure would only affect retail spaces larger than 5,000 square feet and chain retailers.

• Of the 100 billion plastic bags used yearly by Americans, less than 1% ever make it to a recycling bin (3).

• Plastic bags can take anywhere from 450 to 1000 years to break down, even then, the plastic remains forever. Paper bags biodegrade easily (4).

• Aquatic animals often mistake floating plastic bags for a food source like jellyfish. As a result, plastic waste accounts for more than 100,000 marine animal deaths a year, many of which are **endangered** sea turtles that populate the coast of North Carolina (5).

1) "Good Stuff? - Plastic Bags | Worldwatch Institute." Worldwatch Institute | Vision for a Sustainable World. 26 May 2009 <http://www.worldwatch.org/node/1499>.

2) http://publicpolicypolling.blogspot.com/2009/05/liberal-agenda-in-leg.html

3) Algalita Marine Research Foundation. Plastics are Forever. Brochure. Long Beach, CA

4) "Plastic Bags: What About Recycling Them? - Sustainable consumption - Sustainable Consumption - Sierra Club." Sierra Club Home Page: Explore, Enjoy and Protect the Planet. 26 May 2009 <http://www.sierraclub.org/sustainable_consumption/articles/bags2.asp>

5) Earth Resource Foundation. 26 May 2009 <http://www.earthresource.org/campaigns/capp/capp-sea-turtles.html>.

SENATE BILL 1018:
Ban Certain Single-Use Bags

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 17, 2009
Introduced by:	Sen. Stein	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S1018-CSMH-10		Committee Co-Counsel

SUMMARY: ***Senate Bill 1018 would prohibit retailers from providing customers with plastic bags unless the bag (1) is reusable or (2) is used solely to hold sales of otherwise unpacked portions or fresh (i) fish or fish products, (ii) meat or meat products, (iii) poultry or poultry products, or (iv) produce. The Proposed Committee Substitute provides that the substitution of paper bags is permitted if the bag is a recycled paper bag and the retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer (1) a cash refund, (2) a store coupon or credit for general store use, or (3) a value or reward under the retailer's customer loyalty or rewards program for general store use.***

Senate Bill 1018 would apply only to counties that include a barrier island or a peninsula and meet additional specified conditions (Dare, Currituck and Hyde Counties.)

[As introduced, this bill was identical to H810, as introduced by Reps. Harrison, Martin, which is currently in House Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship.]

BILL ANALYSIS:

Section 1 creates a new Part 2G, Plastic Bag Management, in Article 9 of Chapter 130A of the General Statutes. Section 1 does all of the following:

New **G.S. 130A-309.120** sets forth findings by the General Assembly.

New **G.S. 130A-309.121** provides definitions for the following terms: "Plastic bag," "Prepared foods retailer," "Recycled paper bag," Retail chain," "Retailer," and "Reusable bag."

New **G.S. 130A-309.122** bans the use of plastic bags unless the bag (1) is a reusable bag OR (2) is used solely to hold sales of otherwise unpacked portions of any of the following:

- Fresh fish or fish products.
- Fresh meat or meat products
- Fresh poultry or poultry products
- Fresh produce.

New **G.S. 130A-309.123** allows the substitution of paper bags instead of banned plastic bags if **all** of the following conditions are met:

- The bag is a recycled paper bag.

- The retailer offers **one of the following incentives**[1] to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer:
    - A cash refund.
    - A store coupon or credit for general store use.
    - A value or reward under the retailer's customer loyalty or rewards program.

Retailers may provide customers reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers. A prepared foods retailer may package prepared foods in a recycled paper bag, regardless of the availability of a reusable bag, to comply with handling standards or best practices.

New **G.S. 130A-309.124** requires a retailer subject to the act, other than a prepared foods retailer, to post a sign stating that "_____ County discourages the use of single-use plastic bags and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use."

New **G.S. 130A-309.125** limits the application of Part 2G to islands or peninsulas bounded on the east by the Atlantic Ocean and on the west by a coastal sound, which are within counties that have a barrier island or barrier peninsula that both: (i) has permanent inhabitation of 200 or more residents and is separated from the mainland by a sound and (2) contains either a National Wildlife Refuge or a portion of a National Seashore. (Dare, Currituck and Hyde Counties.)

Section 2 amends G.S. 130A-22(a) (which provides administrative penalties for violations of Article 9 (Solid Waste Management) of Chapter 130A (Public Health)) to authorize penalties for violations of the new Part 2G including:

- $100 for a first violation
- $200 for a second violation within any 12 month period
- $500 for subsequent violations within any 12 month period.
- Violations of the new Part would also be punishable as a Class 1 misdemeanor.[2]

EFFECTIVE DATE: The PCS would become effective September 1, 2009 and apply to retail sales made on or after that date.

S1018-SMRN-95(CSMH-10) v4

Jennifer McGinnis, Counsel to the House Environment and Natural Resources Committee, and Barbara Riley, Counsel to the Senate State and Local Government Committee, contributed substantially to the drafting of this summary.

[1] The amount of the incentive shall be equal to or greater than the cost to the retailer of providing a recycled paper bag, multiplied by the number of reusable bags filled with the goods purchased by the customer.

[2] See GS 130A-22 (Administrative Penalties) and GS 130A-25(a) (Misdemeanor)/GS 14-3(a) (Punishment of Misdemeanors). The range of punishment for a Class 1 misdemeanor, assuming no prior convictions, is 1-45 days community punishment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 1018

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/9/09

Short Title: Ban Certain Single-Use Bags. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2G. Plastic Bag Management.

"**§ 130A-309.120. Findings.**

The General Assembly makes the following findings:

(1) Distribution of plastic bags by retailers to consumers for use in carrying, transporting, or storing purchased goods has a detrimental effect on the environment of the State.

(2) Discarded plastic bags contribute to overburdened landfills, threaten wildlife and marine life, degrade the beaches and other natural landscapes of North Carolina's coast, and, in many cases, require consumption of oil and natural gas during the manufacturing process.

(3) It is in the best interest of the citizens of this State to gradually reduce the distribution and use of plastic bags.

(4) Environmental degradation is especially burdensome in counties with barrier islands where soundside and ocean pollution are more significant, where removing refuse from such isolated places is more difficult and expensive, where such refuse deters tourism, and where the presence of a National Wildlife Refuge or National Seashore shows that the federal government places special value on protecting the natural environment in that vicinity.

(5) The barrier islands are most relevant in that they are where sea turtles come to nest. North Carolina has some of the most important sea turtle nesting areas on the East Coast, due to the proximity of the islands to the Gulf Stream. Plastic bag debris can be harmful to sea turtles and other land and marine life. The waters adjacent to the barrier islands, because they serve as habitat for the turtles, are particularly sensitive to waterborne debris pollution.

(6) Inhabitated barrier islands are visited by a high volume of tourists and therefore experience a high consumption of bags relative to their permanent population due to large numbers of purchases from restaurants, groceries, beach shops, and other retailers by the itinerant tourist population.

(7) Barrier islands are small and narrow, and therefore the comparative impact of plastic bags on the barrier islands is high.

"**§ 130A-309.121. Definitions.**

As used in this Part, the following definitions apply:

(1) Plastic bag. – A carryout bag composed primarily of thermoplastic synthetic polymeric material, which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.

(2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in G.S. 105-164.3, to consumers.

(3) Recycled paper bag. – A paper bag that meets all of the following requirements:

a. The bag is manufactured from one hundred percent (100%) recycled content, including postconsumer content, postindustrial content, or a mix of postconsumer and postindustrial content.

b. The bag displays the words "made from recycled material" and "recyclable."

(4) Retail chain. – Five or more stores located within the State that are engaged in the same general field of business and (i) conduct business under the same business name or (ii) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

(5) Retailer. – A person who offers goods for sale in this State to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods and (i) has more than 5,000 square feet of retail or wholesale space or (ii) is one of a retail chain.

(6) Reusable bag. – A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse or a bag made of cloth or other machine washable fabric with handles.

"**§ 130A-309.122. Certain plastic bags banned.**

No retailer shall provide customers with plastic bags unless the bag is a reusable bag, or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of the following items:

(1) Fresh fish or fresh fish products.

(2) Fresh meat or fresh meat products.

(3) Fresh poultry or fresh poultry products.

(4) Fresh produce.

"**§ 130A-309.123. Substitution of paper bags restricted.**

(a) A retailer subject to G.S. 130A-309.122 may substitute paper bags for the plastic bags banned by that section, but only if all of the following conditions are met:

(1) The paper bag is a recycled paper bag.

(2) The retailer offers a refund to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer. The refund shall equal the cost to the retailer of providing a recycled paper bag, multiplied by the number of reusable bags filled with the goods purchased by the customer.

(b) Nothing in this Part shall prevent a retailer from providing customers with reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers.

(c) Notwithstanding subsection (a) of this section, a prepared foods retailer may package prepared foods in a recycled paper bag, regardless of the availability of a reusable bag, in order to comply with food sanitation or handling standards or best practices.

"**§ 130A-309.124. Required signage.**

A retailer subject to G.S. 130A-309.122 other than a prepared foods retailer shall display a sign in a location viewable by customers containing the following notice: "[county name] County discourages the use of single-use plastic and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use." The name of the county where the retailer displaying the sign is located should be substituted for "[county name]" in the language set forth in this section.

"**§ 130A-309.125. Applicability.**

(a) This Part applies only in a county which includes a barrier island or barrier peninsula, in which the barrier island or peninsula meets both of the following conditions:

(1) It has permanent inhabitation of 200 or more residents and is separated from the North Carolina mainland by a sound.

(2) It contains either a National Wildlife Refuge or a portion of a National Seashore.

(b) Within any county covered by subsection (a) of this section, this Part applies only to an island or peninsula that both:

(1) Is bounded on the east by the Atlantic Ocean.

(2) Is bounded on the west by a coastal sound."

SECTION 2. G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars ($15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars ($32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars ($100.00) for a first violation; two hundred dollars ($200.00) for a second violation within any 12-month period; and five hundred dollars ($500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

...."

SECTION 3. This act becomes effective September 1, 2009, and applies to retail sales made on or after that date.

2ND CORRECTED NOTICE
REMOVE HB 1151

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 24, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: We will start the meeting with a short presentation by Brian Powell, Legislative Chair for the Carolinas Golf Course Superintendents Association, regarding Golf Economic Impact.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
~~HB 1151~~	~~Res. Lead-Based Paint Hazards/Renovations.~~	~~Representative Farmer-Butterfield~~ ~~Representative Earle~~ ~~Representative England, M.D.~~ ~~Representative Rapp~~
SB 6	ABC Rules/Private Clubs.	Senator Boseman
~~SB 405~~	~~Real Property Sales Information.~~	~~Senator Hartsell~~
~~SB 882~~	~~Statute of Repose/Products Liability.~~	~~Senator Hartsell~~
SB 893	Workers' Comp Self-Insurance Security Ass'n.	Senator Hartsell

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **15** o'clock on **June 24, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 24, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: We will start the meeting with a short presentation by Brian Powell, Legislative Chair for the Carolinas Golf Course Superintendents Association, regarding Golf Economic Impact.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
SB 6	ABC Rules/Private Clubs.	Senator Boseman
SB 405	Real Property Sales Information.	Senator Hartsell
SB 882	Statute of Repose/Products Liability.	Senator Hartsell
SB 893	Workers' Comp Self-Insurance Security Ass'n.	Senator Hartsell

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **15** o'clock on **June 18, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, June 24, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

Introduction of Guest Speaker **Brian Powell, Board of Directors Member** **Carolinas Golf Course Superintendents Association**	**Representative Dickson**

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 6	ABC Rules/Private Clubs.	Senator Boseman
SB 893	Workers' Comp Self-Insurance Security Association.	Senator Hartsell
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Rep. Farmer-Butterfield Rep. Earle Rep. England, M.D. Rep. Rapp

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, June 24, 2009
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, June 24, 2009, at 1:00 p.m. in Room 1228 of the Legislative Building. Representative Margaret H. Dickson, Chair, called the meeting to order and recognized the Pages, Sergeant-at-Arms, Staff, and the Acting Committee Assistant, Nancy Goodman. Committee Members present: Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Floyd, Frye, Goforth (Vice-Chair), Harrell, Holloway, McGee, Mills, Pierce, Samuelson, Starnes (Vice-Chair), Steen, Tarleton, Wilkins (Vice-Chair), and Wray. Representative Farmer-Butterfield requested an excused absence.

Representative Dickson explained to the Committee there was to be a brief presentation by Brian Powell, Board of Directors and Member of the Association of Carolinas Golf Course Superintendents. Refer to Attachments #1 and #2.

Mr. Powell went through a power point presentation from SRI International which helps to show the economic impact of golf in North Carolina. He further explained how the golf economy framework gives the state $2.6 Billion in direct impact; $5.3 Billion in direct, indirect and induced impacts; 69,000 jobs; and $1.7 billion in wage income. North Carolina ranks 3rd in golf economy rank in the United States.

His core message to the Committee was that the game of golf is an industry which contributes significantly to North Carolina's economy as well as its large part in charitable giving such as the Wyndham Championship which produced $1 million for charity from donations with just one tournament.

Representative Dickson asked if there were certain areas of the state which had more to offer with golf. Mr. Powell commented that North Carolina was well diversified; of course, Moore County would be most well known.

Representative Dickson thanked the presenter. The committee proceeded with the bills before the Committee.

The first bill for consideration was **Senate Bill 6**, a bill to be entitled, **AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.** Representative Harrell was called upon to explain the bill for Senator Boseman (refer to the bill summary attached hereto). Representative Tarleton moved to place a proposed committee substitute before the Committee. Motion was accepted.

Representative Harrell began by explaining the bill was identical to a bill previously passed on the House floor a couple weeks ago (HB 1228) and that the committee substitute amends the title. Basically this bill calls for reduction of time for membership concerning private clubs so that there would no waiting period needed to join which presently there is a 3-day waiting period. An example given would be military personnel on leave for only one day who could not go into private club because of the waiting period now required.

Reverend Mark Creech with the Christian Action League offered objections to the change. He explained how restaurants had many restrictions imposed by law included waiting periods for licenses, 30% of gross receipts must come from food, etc. which gives private club an advantage over restaurants. As a compromise, he offered perhaps a waiver for out of state or out of county residents?

Mr. Jonathan Carr with the North Carolina Restaurant & Lodging Association spoke also in opposition of the proposed committee substitute.

Ms. Lawless Bean, Special Assistant to the City Manager of Wilmington, spoke in favor of the change of the waiting period. She gave a recent example of Navy personnel who were not allowed to partake in recent celebrations being held in Wilmington because of the 3-day waiting period.

After several questions concerning the bill, Mr. Brad Krehely, staff counsel, was called upon to explain how the ABC Commission can still have a rule pertaining to the waiting period. It was then suggested perhaps the bill sponsor, Senator Boseman, needed to bring all aspects to the table before proceeding with the passage of the bill. Representative Harrell requested to displace the bill.

The next bill for consideration was **Senate Bill 893**, a bill to be entitled **AN ACT TO ALLOW THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION TO COLLECT GROUP SELF-INSURER ASSESSMENTS; TO EXCLUDE FROM PARTICIPATION IN THE ASSOCIATION AGGREGATE SECURITY SYSTEM INDIVIDUAL SELF-INSURERS THAT FAIL TO SUBMIT CERTAIN FINANCIAL INFORMATION; AND TO ADJUST DEPOSIT REQUIREMENTS FOR ALL INDIVIDUAL SELF-INSURERS.**

Representative Ross was called upon to explain the bill (refer to the bill summary attached hereto). Representative Avila said as a business owner, she already pays into workman's comp, why would this be necessary? Representative Ross said this was different as this is an assessment agreed upon by the NC Self-Insurance Guaranty Association. There are no objections to this bill.

The Chair called upon Kathy Stewart, counsel for the Association. Ms. Stewart said the Association consisted of 122+ companies across North Carolina which included the likes of Lowes, Progress Energy, etc. They want this bill in order to have a safety net.

Representative Goforth moved for a favorable report. Motion passed.
There being no further business, the meeting adjourned.

Representative Margaret H. Dickson, Chair

Nancy Goodman, Acting Committee Assistant

VISITOR REGISTRATION SHEET

Senate Small Business & Entrepreneurship — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	NCTIA
Drew Moritz	GECC
Allison Walter	Charlotte Chamber
Chuck Allen	US Airways
Seth Pecker	Rep. Hilliard
Lawrence Bean	City of Wilmington
F. Jerry Pickard	U.S. Dept. Commerce
T.W. Pouncy	
Alexandra Embory	DENR
Marc Finlayson	Finlayson Consulting, LLC
Sen. Mark Crecca	CAL

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JAKE AEDRICH	TAKEDA PHARM
Scott Mooneyham	The Insider
Michelle Frazier	MF+S
Andrew Cagle	DLC
Gary Robertson	AP
Debra DeCamillis	UNC-IOG
Amy Gilder	MWC
Will Culpepper	Moore + Van Allen
Preston Howard	MCIC
David Boaz	MWC
Ashley Beal	American Cancer Society
Jon Carr	NC Restaurant + Lodging Assoc. & American cancer society

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — 6/24/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gregory Thorpe	NFIB
[illegible]	NMRS
[illegible]	NCDTA/NCCBA,CO
[illegible]	Raleigh
[illegible]	[illegible]
Cathy Stanley	SLF
AND LUKE	ONE
NCDOT Rose Wilkins	
Lisa Martin	NC Home Builders
Jessi Hayes	
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	No Chamber
Dean Plunkett	NCBWWA
Conor Brockett	NCSBA
Joel Maynard	CMS
Jamie [illegible]	CAL
Daniel Baum	K+L Gates
Bill Scoggin	PCG

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — 6/24/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Kaylor	Kaylor Law Firm
Jennifer Cohen	IFNC
Sara Nienow	NCDOC
Betsy Veitch	American Heart Assn
[signature]	DCC
Michael Simpson	Dominion

HOUSE PAGES

NAME OF COMMITTEE Commerce & Small Business DATE June 29, 09

1. Name: Samantha Creasy
   County: Forsyth
   Sponsor: Bill McGee
2. Name: Lexi Hergeth (Her-geth)
   County: WAKE
   Sponsor: PAUL STAM
3. Name: Catherine Coleman
   County: Sampson
   Sponsor: Larry Bell
4. Name: Chelsea Rush
   County: Rutherford
   Sponsor: England
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: John
2. Name:
3. Name:
4. Name:

Attachment #1

NORTH CAROLINA GOLF

Economically Vital
Environmentally Responsible
Socially Beneficial

North Carolina Alliance for Golf

CAROLINAS GOLF ASSOCIATION

CAROLINAS SECTION

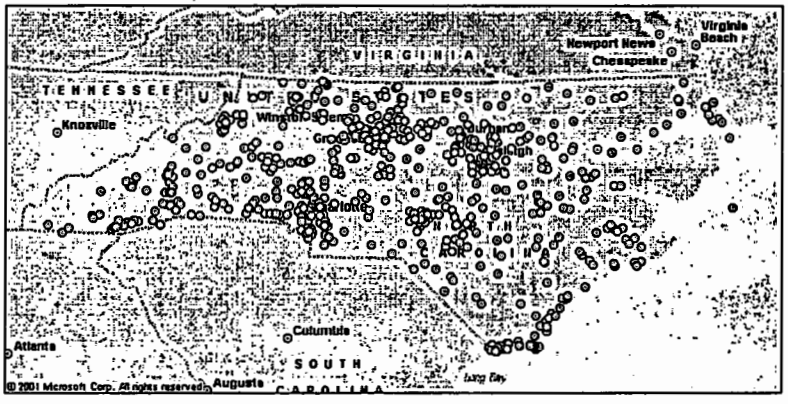
GOLF COURSE SUPERINTENDENTS CAROLINAS 1954

CAROLINAS

NGCOA North Carolina Chapter

NORTH CAROLINA GOLF MARKETING ALLIANCE

North Carolina Golf Facilities



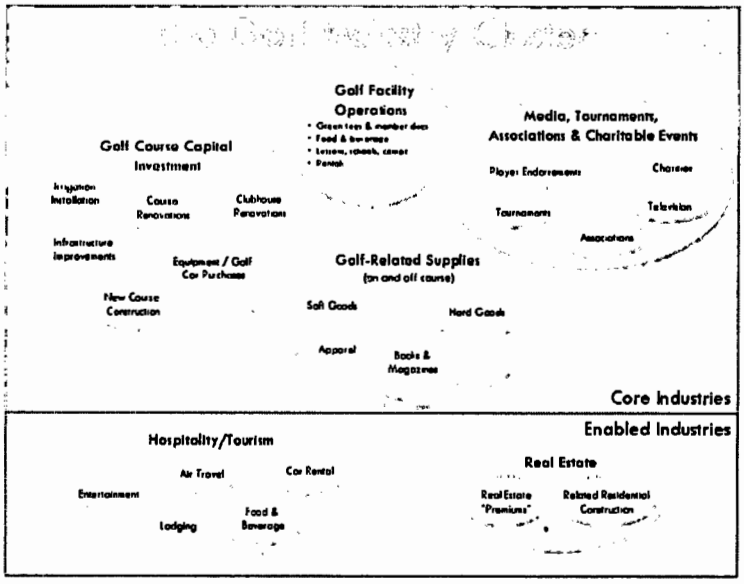
Why an Economic Impact Study?

- Determine Economic Impact of the North Carolina Golf Economy
- Define Range of Core & Enabled Industries Associated with Golf
- Provide Data to Key Policy Makers & Regulators
- Build Credibility of Golf as a Significant Business Sector & Driver of State Economic Activity

SRI International

- SRI is a nonprofit research and consulting firm established in 1949 and spun off from Stanford University in 1970
- Combines the analytical rigor of a university with real-world business applications
- Solves important problems and crafts innovative approaches that become industry standards

Golf Economy Framework



Economic Impact Definitions

- Direct Impact: Economic activity (production, employment) linked to provision of golf products and services
- Indirect Impact: Regional production of goods and services that supply golf courses and related industries
- Induced Impact: Consumer spending in other sectors via employment in core and enabled golf industries
- Multiplier effects: Idea that the impact of economic activity stimulated by golf will disproportionately exceed the direct impact
- RIMS II: Regional Input-Output Modeling System, U.S. Dept. of Commerce, Bureau of Economic Analysis

North Carolina's 2007 Golf Economy

- $2.6 Billion in Direct Economic Impact
- $5.3 Billion in Direct, Indirect & Induced Economic Impact
- *69,000 jobs*
- $1.7 Billion in Wage Income

North Carolina Golf Economy

Industry Segment	2007 Revenues ($M)
Golf Facility Operations	$1,030.8
Golf Course Capital Investment	$153.2
Golf-Related Supplies	$86.7
Tournaments & Associations	$32.1
Golf Real Estate	$740.4
Golf Tourism	$507.8
TOTAL	$2,626.4

Total Economic Impact

North Carolina Golf's Economic Impact 2007

Industry	Direct ($M)	Indirect	Induced	Total Output ($M)	Total Jobs	Total Wages ($M)
Golf Facility Operations	$1,030.8	→	→	$2,155.7	32,734	$714.2
Golf Course Capital Investment*	$153.2	→	→	$223.1	2,115	$69.6
Golf-Related Supplies	$158.4	→	→	$343.6	2,836	$86.7
Tournaments & Associations	$35.8	→	→	$82.8	1,124	$32.1
Real Estate**	$740.4	→	→	$1,402.2	13,292	$437.1
Hospitality & Tourism	$507.8	→	→	$1,096.3	16,566	$355.8
TOTAL	$2,626.4	→	→	$5,303.7	68,667	$1,695.5

Where Does NC Golf Economy Rank?

• California	$6.9B	Direct	$15.1B	Total
• Texas	$3.4B		$7.4B	
• **NC**	**$2.6B**		**$5.3B**	
• Ohio	$2.3B		$4.8B	
• Michigan	$2.2B		$4.2B	
• New Jersey	$1.8B		$2.7B	
• Virginia	$1.6B		$3.1B	
• SC	Not Reported		$2.3B	

Core Message

- The game of golf is an industry in its own right, and contributes significantly to the NC economy.
- The total amount of charitable giving attributed to the game of golf in North Carolina exceeded $132.4 million in 2007.
- As a $5.3B industry, the continued health and growth of the golf industry has a direct bearing on future jobs, commerce, economic development, and tax revenues for a large number of NC communities and industries.

The Jimmy V Celebrity Golf Classic Goes Pink for Coach Yow
August 16 Lonnie Poole Golf Course on NC State's Centennial Campus

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 6
Commerce Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/2/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S6-CSRN-38 [v.3]

6/23/2009 1:37:59 PM

Short Title: ABC Rules/Private Clubs. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE AUTHORITY OF THE ABC COMMISSION IN G.S. 18B-1008 TO ADOPT RULES CONCERNING PRIVATE CLUBS BY DELETING THE SPECIFIC GRANT OF AUTHORITY TO ADOPT A RULE REQUIRING THAT A PRIVATE CLUB HAVE A WAITING PERIOD FOR MEMBERSHIP AND TO REQUIRE THE ABC COMMISSION TO EXAMINE NONCOMPLIANCE WITH COMMISSION RULES FOR ABC ESTABLISHMENTS OPERATING AS PRIVATE CLUBS AND TO REPORT ITS FINDINGS TO THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1008 reads as rewritten:

"**§ 18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also ~~include, but need not be limited to,~~ include requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. ~~beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.~~"

SECTION 2. The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010.

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

SENATE BILL 6:
ABC Rules/Private Clubs

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 24, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	PCS to Third Edition S6-CSRN-38		

SUMMARY: ***Senate Bill 6 would amend G.S. 18B-1008 regarding the authority of the ABC Commission to adopt rules concerning private clubs, by deleting the specific grant of authority to adopt a rule requiring that a private club have a waiting period for membership.*** ***The Proposed Committee Substitute amends the title.***

CURRENT LAW: A **private club** is "An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests." G.S. 18B-1000(5) When the issuance of the permit is lawful in the jurisdiction in which the premises are located, private clubs are eligible for on-premises beer and wine permits and mixed beverage or brown bagging permits. G.S.18B-1001

The ABC Commission has broad discretion in defining the kinds of places eligible for permits. The rules may state: the kind and amount of food that must be sold to qualify for a permit, the size of the establishment, the type of facilities, and other factors necessary to determine whether a business is a bona fide establishment of the type that is eligible for a permit. G.S. 18B-1008.

Rules concerning **private clubs** may also include requirements (1) that the club have a membership committee to review all applications for membership, (2) that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, (3) that the club restrict use by nonmembers,(4) that the club provide facilities or activities other than those directly related to the use of alcoholic beverages, and (5) that the club have a waiting period for membership, not exceed 30 days. G.S. 18B-1008.

Pursuant to this statutory authority, the ABC Commission adopted **Rule 2S.0107**, which sets out **special requirements for private clubs.** The rule expands the definition of a private club by setting out "typical characteristics" that the Commission will consider in determining whether an establishment is indeed a private club -- such as whether membership is subject to clearly stated requirements, whether members can and do participate in its organizational affairs, and whether membership entitles a person to significant privileges other than the consumption of alcoholic beverages.

In addition, the rule sets forth a number of **mandatory requirements** that an establishment must comply with in order **to qualify as a private club** -- including collection of an annual membership fee, requiring each prospective member to complete a written application, and a requirement that the establishment grant no membership sooner than three days after receipt of application.

BILL ANALYSIS:

Section 1 would amend G.S. 18B-1008 regarding the authority of the ABC Commission to adopt rules concerning private clubs, by deleting the specific grant of authority to adopt a rule requiring that a private club have a waiting period for membership.

Section 2 would direct the ABC Commission to keep a record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs and to report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee prior to the convening of the 2011 Regular Session of the General Assembly.

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

BACKGROUND: The PCS for Senate Bill 6 is almost identical to House Bill 1228 which passed 2nd and 3rd Readings in the House of Representatives on May 14, 2009.

S6-SMRN-98(CSRN-38) v1

Brenda Carter contributed substantially to the drafting of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 6

Commerce Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/2/09

Short Title: ABC Rules/Private Clubs. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1008 reads as rewritten:

"**§ 18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also ~~include, but need not be limited to,~~ include requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. ~~beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.~~"

SECTION 2. The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Committee Substitute for

SB 893 A BILL TO BE ENTITLED AN ACT TO ALLOW THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION TO COLLECT GROUP SELF-INSURER ASSESSMENTS; TO EXCLUDE FROM PARTICIPATION IN THE ASSOCIATION AGGREGATE SECURITY SYSTEM INDIVIDUAL SELF-INSURERS THAT FAIL TO SUBMIT CERTAIN FINANCIAL INFORMATION; AND TO ADJUST DEPOSIT REQUIREMENTS FOR ALL INDIVIDUAL SELF-INSURERS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

SENATE BILL 893:
Workers' Comp Self-Insurance Security Ass'n

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 24, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 893 would authorize the North Carolina Self-Insurance Guaranty Association to make assessments of group self-insurers, clarify exclusion of individual self-insurers that default on payments, exclude individual self-insurers failing to submit sufficient financial information to the Association, and raise the amount to be deposited by certain self-insurers.***

BACKGROUND: The North Carolina Self-Insurance Guaranty Association (Association) is a "nonprofit, unincorporated legal entity" which provides for the payment of covered claims (under the Workers' Compensation Act) against member, self-insurers in order to avoid financial loss to claimants because of the insolvency of member self-insurers. G.S. 97-131. The Association performs its duties under a Plan of Operation established by its Board and approved by the Commissioner of Insurance. The Association Aggregate Security System (System) was established by the Association to allow self-insurers to collectively secure their aggregate self-insured workers' compensation liabilities through the Association. The Association may assess its members participating in the System based upon factors such as the total amount needed to provide aggregate security and an individual self-insurers' total workers' compensation liabilities and financial strength. The Association annually submits its plan for the System which must be approved by the Commissioner.

BILL ANALYSIS: **Section 1** of the bill would authorize the Association to annually assess **group** self-insurers participating in the System in an amount not to exceed 2% of gross premiums for the preceding calendar year. A group self-insurer is two or more employers who agree to pool their workers' compensation liabilities. Current law authorizes assessments against individual self-insurers.

Section 2 would make a technical amendment to clarify that an individual self-insurer that has defaulted on the payment of it workers' compensation liability is excluded from the System.

Section 3 would add a new subdivision to exclude individual self-insurers that fail to submit sufficient financial information from the System.

Section 4: Under current law, when no System is in effect (this would occur when the Commissioner disapproves the System submitted by the Association), an individual self-insurer with a debt rating of BBB or better from Standard & Poor's must deposit with the Commissioner an amount not less than 25% of total undiscounted outstanding claims, but not less than $500,000. The Commissioner may **increase or decrease** this amount in his or her discretion. All other individual self-insurers must deposit a minimum amount not less than 100% of the self-insurer's outstanding claims, but not less than $500,000, or such **greater** amount as the Commissioner prescribes.

Section 4 would increase the minimum, deposit amount from 25% to 50% of total undiscounted, outstanding claims when no System is in effect for individual self insurers who have a BBB debt rating or better.

EFFECTIVE DATE: Senate Bill 893 becomes effective July 1, 2009.

Tim Hovis, counsel to Senate Commerce, and Ben Popkin, counsel to House Insurance, substantially contributed to this S893-SMRQ-107(e2) v2

SENATE BILL 893
Commerce Committee Substitute Adopted 5/12/09

Short Title: Workers' Comp Self-Insurance Security Ass'n. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION TO COLLECT GROUP SELF-INSURER ASSESSMENTS; TO EXCLUDE FROM PARTICIPATION IN THE ASSOCIATION AGGREGATE SECURITY SYSTEM INDIVIDUAL SELF-INSURERS THAT FAIL TO SUBMIT CERTAIN FINANCIAL INFORMATION; AND TO ADJUST DEPOSIT REQUIREMENTS FOR ALL INDIVIDUAL SELF-INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-133(a)(3a) is amended by adding a new sub-subdivision to read:

"f. Group assessments. – The Association may annually assess each member group self-insurer in an amount not to exceed two percent (2%) of the group self-insurer's annual gross premiums for the preceding calendar year, as determined under G.S. 105-228.5(b), (b1), and (c)."

SECTION 2. G.S. 97-185(a1)(3) reads as rewritten:

"(3) Individual self-insurers that have defaulted on the payment of ~~its~~ their self-insured workers' compensation liabilities. ~~liabilities from participation in the Association Aggregate Security System.~~"

SECTION 3. G.S. 97-185(a1) is amended by adding a new subdivision to read:

"(4) Individual self-insurers that fail to submit sufficient financial information to enable the Association to determine their total outstanding workers' compensation liabilities, or their creditworthiness, or both."

SECTION 4. G.S. 97-185(b3) reads as rewritten:

"(b3) During any period of time that no Association Aggregate Security System is in effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than ~~twenty-five percent (25%)~~ fifty percent (50%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000). An individual self-insurer licensed pursuant to G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the application of this subsection. The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the individual self-insurer's claims liability based on the financial strength of the individual self-insurer and other financial information submitted by the individual self-insurer. All other individual self-insurers shall deposit with the Commissioner an amount not less than one

hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer."

SECTION 5. This act becomes effective July 1, 2009.

Brenda Lee (Rep. Dickson)

ım: Brenda Lee (Rep. Dickson)
ɔent: Monday, June 29, 2009 10:20 AM
To: Rep. Pryor Gibson; Sen. Fletcher Hartsell, Jr.; Sen. A.B. Swindell; Sen. Floyd McKissick
Cc: Susanna Davis (Rep. Gibson); Gerry Johnson (Sen. Hartsell); Mo Hudson (Sen. Swindell); Bernie David-Yerumo (Sen. McKissick)
Subject: Commerce Committee Notice 7-1-2009

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 1, 2009
TIME: 1:00 pm
LOCATION: 1228 LB

ollowing bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1227	Conform Low-Income Housing Tax Credits.	Representative Gibson
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell
SB 405	Real Property Sales Information.	Senator Hartsell
SB 882	Statute of Repose/Products Liability.	Senator Hartsell
SB 458	GED HS Diploma/No Drug Convict/Bail Bondsman.	Senator Swindell
SB 643	Amend Drug Exam Regulation.	Senator Swindell
SB 465	Amend State Fair Housing Act.	Senator McKissick
SB 810	Affordable Housing/No Discrimination.	Senator McKissick

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:15 a.m. on **June 29, 2009.**

ipal Clerk
ing Clerk – House Chamber

Brenda Lee (Committee Assistant)

09/17/2009

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, July 1, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 1227	Conform Low-Income Housing Tax Credits	Representative Gibson
SB 285	Rewrite Foreign Money Judgments Laws	Senator Hartsell
SB 405	Real Property Sales Information	Senator Hartsell
SB 882	Statute of Repose/Products Liability	Senator Hartsell
SB 458	GED HS Diploma/No Drug Convict/Bail Bondsman	Senator Swindell
SB 643	Amend Drug Exam Regulation	Senator Swindell
SB 465	Amend State Fair Housing Act	Senator McKissick
SB 810	Affordable Housing/No Discrimination	Senator McKissick

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, July 1, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, July 1, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Goforth, Starnes, Stewart and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Gillespie, Holloway, Mills, Pierce, Rapp, Samuelson, Steen, Warren, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 643 - A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PROSPECTIVE EMPLOYEE REQUIRED TO SUBMIT TO A CONTROLLED SUBSTANCE EXAMINATION WHOSE FIRST SCREENING TEST PRODUCES A POSITIVE RESULT MAY WAIVE A SECOND EXAMINATION THAT IS INTENDED TO CONFIRM THE RESULTS. Sponsor: Senator Swindell
Representative Allen presented SB 643 on behalf of Senator Swindell. She said that the bill was self-explanatory by the title. .This process would save companies money when they know after the first test that they are not going to hire that prospective employee. Discussion followed. Representative Farmer-Butterfield moved for a favorable report with a re-referral to the Committee on Judiciary III. The motion passed.

SB 458 - A BILL TO BE ENTITLED AN ACT REQUIRING AN APPLICANT FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER TO HAVE OBTAINED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT AND TO PROHIBIT A PERSON FROM BEING LICENSED IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION. Sponsor: Senator Swindell
Representative Harrell moved for adoption of the proposed House committee substitute, and it was adopted. Representative Wray presented SB 458 on behalf of Senator Swindell. Discussion followed. Representative Floyd moved for a favorable report for the proposed House committee substitute, unfavorable to the original bill with a recommendation for re-referral to the Committee on Finance. The motion passed.

HB 1227 - A BILL TO BE ENTITLED AN ACT TO CONFORM CERTAIN NORTH CAROLINA TAX CREDITS TO THE FEDERAL NEW MARKETS TAX CREDIT.
Sponsor: Representative Gibson
Representative Gibson presented HB 1227. He, Representative McComas and others have worked on Brownfields issues across the state for years. Brownfields are those areas that get contaminated and cannot be cleaned up, and are a nightmare to get re-used. HB 1227 is a small component of what has been worked on over the years. It addresses one specific component of some larger urban areas such as Durham and Winston-Salem. The bill would move up some of the tightly scripted descriptors from 30% to 40% to match the approximately 80 counties in other parts of North Carolina that are allowed the 40% credit. He said the bill sends a strong signal that we are serious about continuing to revitalize our downtown areas in North Carolina. Discussion followed. Representative Warren moved for a favorable report for HB 1227 with a recommendation for re-referral to the Committee on Finance.

SB 465 - A BILL TO BE ENTITLED AN ACT AMENDING THE STATE FAIR HOUSING ACT. Sponsor: Senator McKissick
Senator McKissick presented SB 465 and said that it came to him from the North Carolina Human Relations Commission. The purpose of the bill is to make our state fair Housing laws substantially equivalent to the federal fair housing laws. Discussion followed. Representative Floyd moved for a favorable report and a recommendation for re-referral to the Committee on Judiciary III.

The meeting adjourned at 1:45 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kay Paksay	National Association of Social Workers NC Chapter
Andrew Cagle	DLC
Julia Leggett	The Arc of NC
Claude Gilliken	G.S.K.
Preston Howard	MCIC
Joe Stewart	NC Chamber
Ann Swaggin	K-B
Richard Bonlden	NCHRC
Gary Salamido	GSK
Michael Houser	NC DOR
Alan Woodard	NC DOR

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel [illegible]	Electr. Ctrs of N.C. Inc.
Paul Stam	NCBA
ELLIS HAWKINS	NCLM
Kell: Ikica	NCLM
R. Paul Wilms	WGR
Rose Williams	NCDOI
Angela Ford	NCDOI
Etta P Maynard	NCDOI
P. Bly Hall	General Statutes Commission
Floyd Lewis	General Statutes Commission
Gregg Thompson	NFIB

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Dalton	NCRMA
RC	One IC
Kara Hanson	Progress Energy
	BCS
Colleen Kochanek	AANC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Gardner	Duke Energy
Jordan Qualls	Lou Wilson
Leslie Arnold	SOG - Daily Bulletin
David Baker	NCDOR
Meredith Cook	NC DOL
Jennifer Haigwood	NC DOL
Art Britt	NC DOL
Brian Shank	AT
John Bowdich	Astra Zeneca
Barbara Carsler	BBCoC
Chris Smith	NCADA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brad Sucles	
Benton Craig	NCAJ
Emily Gallimore	NCBA
Kim Crouch	NCBA
Butch Gunnells	NC Bev A
Patrick Buffkin	MMRS
Sara Nienow	NC DOC
Joe McMillan	MF&S
John McAlister	NC Chamber
M Z MANN	NCBAA
Reggie Holley	NCBAA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 1, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Puddy	NCAJ
Doug Taylor	NCAJ
JAY TREHY	NCAJ
ELAINE GORSKI	CHAPEL HILL, NC
David Boray	MWC
Harry Kaplan	MWC
Victoria Hawkins	Bone + Assoc.
Allison Wallin	Charlotte Chamber
Karen Kemmerl	NCACC

COMMERCE SMALL BUSINESS **HOUSE PAGES**

NAME OF COMMITTEE AND ENTREPRENURSHIP **DATE** 1 JUL-OT

1. **Name:** Steven Sayer
   County: Guilford
   Sponsor: John Blust
2. **Name:** Kimberly May
   County: Halifax
   Sponsor: Wray
3. **Name:** Claire Johnson
   County: Johnston
   Sponsor: James Langdon
4. **Name:** Calline Kirkman
   County: Randolph
   Sponsor: Pat Hurley
5. **Name:** Rebecca Lineberry
   County: Wake
   Sponsor: Joe Hackney

SGT-AT-ARM

1. **Name:** JERALD PERRY
2. **Name:** YOUNG BAE
3. **Name:** Trey Raley
4. **Name:**

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 643 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PROSPECTIVE EMPLOYEE REQUIRED TO SUBMIT TO A CONTROLLED SUBSTANCE EXAMINATION WHOSE FIRST SCREENING TEST PRODUCES A POSITIVE RESULT MAY WAIVE A SECOND EXAMINATION THAT IS INTENDED TO CONFIRM THE RESULTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 643:
Amend Drug Exam Regulation

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	July 1, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 643 would amend the statutes that govern employers' testing of employees for controlled substances, to allow a prospective employee whose first test shows a positive result to waive the second confirmation test required by current law.***

CURRENT LAW: The stated purpose of Article 20 (Controlled Substance Examination) of Chapter 95 (Labor Regulations) is to "establish procedural and other requirements for the administration of controlled substance examinations" by businesses in the State (including the State and local governments) to employees or applicants for employment.

Under current law, if a preliminary screening procedure or test produces a positive result, an approved laboratory must confirm the result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

BILL ANALYSIS: Senate Bill 643 would allow a prospective employee whose first test shows a positive result to waive the second confirmation test required by current law. The waiver must be in writing at the time or after the prospective employee receives the preliminary test result. The bill would clarify that all screening tests for current employees that produce a positive result must be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

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

S643-SMRQ-109(e2) v1

**Jennifer McGinnis, Counsel to Senate Judiciary II, significantly contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 643
Second Edition Engrossed 5/6/09

Short Title:	Amend Drug Exam Regulation.	(Public)
Sponsors:	Senators Swindell; Apodaca, Bingham, Tillman, and Vaughan.	
Referred to:	Judiciary II.	

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROSPECTIVE EMPLOYEE REQUIRED TO SUBMIT TO A CONTROLLED SUBSTANCE EXAMINATION WHOSE FIRST SCREENING TEST PRODUCES A POSITIVE RESULT MAY WAIVE A SECOND EXAMINATION THAT IS INTENDED TO CONFIRM THE RESULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-232(c1) reads as rewritten:

"(c1) Confirmation test of samples: if a ~~preliminary screening procedure or other~~ screening test for a prospective employee produces a positive result, an approved laboratory shall confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted ~~method.~~method, unless the examinee signs a written waiver at the time or after they receive the preliminary test result. All screening tests for current employees that produce a positive result shall be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Senate Committee Substitute for

SB 458 A BILL TO BE ENTITLED AN ACT REQUIRING AN APPLICANT FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER TO HAVE OBTAINED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT AND TO PROHIBIT A PERSON FROM BEING LICENSED IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 458
Commerce Committee Substitute Adopted 4/22/09
Third Edition Engrossed 4/29/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S458-PCS85255-RQ-40

Short Title: GED HS Diploma/No Drug Convict/Bail Bondsman. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING AN APPLICANT FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER TO HAVE OBTAINED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT; TO REQUIRE A RENEWAL APPLICATION AND CRIMINAL HISTORY RECORD CHECK FOR RENEWING A LICENSE; TO PROVIDE THAT A LICENSEE SHALL PAY FOR THE COSTS OF A CRIMINAL HISTORY RECORD CHECK WHEN RENEWING A LICENSE; TO PROHIBIT THE RENEWAL OF A LICENSE OF A LICENSEE WHO HAS BEEN CONVICTED OF A MISDEMEANOR DRUG CHARGE; AND TO PROHIBIT A PERSON FROM BEING LICENSED IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION WITHIN THE PREVIOUS TWENTY-FOUR MONTHS OF THE DATE OF THE APPLICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b) is amended by adding a new subdivision to read:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

...

(1a) Have obtained a high school diploma or its equivalent."

SECTION 2. G.S. 58-71-75 reads as rewritten:

"**§ 58-71-75. ~~Renewal fees.~~Application for license renewal; criminal history record checks and fees required to renew license.**

(a) A bail bondsman or runner who wishes to renew a license shall provide the Commissioner, not less than 30 days prior to the expiration date of the bail bondsman or runner's current license, all of the following:

(1) A renewal application providing the information required by:
  a. G.S. 58-71-50(a)(2);
  b. G.S. 58-71-50(a)(5) through G.S. 58-71-50(a)(7); and
  c. G.S. 58-2-69.

(2) The renewal fee as provided in subsection (c) of this section.

(3) A complete set of fingerprints of the bail bondsman or runner. The fingerprints shall be submitted in the manner prescribed by the Commissioner and shall be certified by an authorized law enforcement officer.

(b) The fingerprints of every bail bondsman or runner seeking to renew a license shall be forwarded by the Commissioner to the State Bureau of Investigation for a State criminal history record check. If warranted, the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. A licensee seeking a renewal license shall pay the cost of the State and national criminal history record check of the licensee.

(c) The renewal fee for a runner's license is sixty dollars ($60.00). The renewal fee for a bail bondsman's license is one hundred dollars ($100.00). A renewed license continues in effect until suspended or revoked for cause."

SECTION 3. G.S. 58-71-80 is amended by adding the following new subsections to read:

"(b1) The Commissioner shall deny, revoke, or refuse to renew any license under this Article if the licensee has been convicted on or after October 1, 2009, of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes.

(b2) The Commissioner shall deny any license under this Article if the applicant has been convicted of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes within the previous 24 months of the date of the application for the license."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 458:
GED HS Diploma/No Drug Convict/Bail Bondsman

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 1, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	PCS to Third Edition S458-CSRQ-40		

SUMMARY: ***Senate Bill 458 requires all applicants for license as a bail bondsmen or a runner to have a high school diploma or its equivalent. It also provides that the Commissioner of Insurance (Commissioner) must deny, revoke or refuse to renew a license if the applicant or licensee has been convicted of a misdemeanor drug offense on or after July 1, 2009 or within the previous 24 months.***

The Proposed Committee Substitute (PCS) makes the following changes to the bill:

- ***Requires an application for renewal of a license within 30 days of the expiration of the current license that includes a complete set of fingerprints.***
- ***Requires the Commissioner to forward the fingerprints to the State Bureau of Investigation for a State criminal history checks of each licensee seeking to renew a license and allows the State Bureau of Investigation to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check if warranted.***
- ***Provides that the licensee seeking renewal would be responsible for the cost of the checks;***
- ***Clarifies that the Commissioner must deny, revoke or refuse to renew a license of a licensee who has been convicted on or after October 1, 2009 of a misdemeanor drug offense under Article 5 of Chapter 90; and***
- ***Clarifies that the Commissioner must deny a license if an applicant has been convicted of a of a misdemeanor drug offense under Article 5 of Chapter 90 within the previous 24 months of the date of the application for the license.***

CURRENT LAW: G.S. 58-71-50 provides that in order to be licensed as a bail bondsman or a runner, the applicant must meet all of the following requirements:

(1) Be 18 years of age or over.
(2) Be a resident of this State.
(3) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
(4) Have no outstanding bail bond obligations.
(5) Have no current or prior violations of any provision of the North Carolina bail and bail bondsmen laws or of any similar provision of law of any other state.
(6) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.
(7) Hold a valid and current North Carolina drivers license or valid North Carolina identification card issued by the Division of Motor Vehicles.

G.S. 58-71-80(a) provides that the Commissioner may deny, suspend, revoke or refuse to renew any license for any of the following causes:

(1) For a cause sufficient to deny, suspend, or revoke the license under other provisions of the Article.
(2) A conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner.
(3) Material misstatement, misrepresentation or fraud in obtaining the license.
(4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
(5) Fraudulent or dishonest practices in the conduct of business under the license.
(6) Conviction of a crime involving moral turpitude.
(7) Failure to comply with or violation of the provisions of this Article or of any order, rule or regulation of the Commissioner.
(8) Demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business; or that the licensee is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.
(9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
(10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Article.
(11) For requiring, as a condition of executing a bail bond, that the principal agree to engage the services of a specified attorney.
(12) For cheating on an examination for a license under this Article.
(13) For entering into any business association or agreement with any person who is at that time found by the Commissioner to be in violation of any of the bail bond laws of this State, or who has been in any manner disqualified under the bail bond laws of this State or any other state, whereby the person has any direct or indirect financial interest in the bail bond business of the licensee or applicant.
(14) For knowingly aiding or abetting others to evade or violate the provisions of this Article.
(15) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance.

G.S. 58-71-80(b) provides that the Commissioner must deny, suspend, revoke or refuse to renew any license if the applicant or licensee is or has ever been convicted of a felony.

BILL ANALYSIS:

Section 1 of the PCS requires all applicants for license as a bail bondsmen or a runner to have a high school diploma or its equivalent. The diploma/GED requirement would apply to individuals applying for a license on or after the date the bill becomes law.

Section 2 of the PCS provides that a bail bondsman or runner seeking to renew a license must provide the Commissioner all of the following information not less than 30 days prior to the expiration of the licensee's current license:

- A renewal application that includes (i) State residency information; (ii) whether the licensee has outstanding bail bond obligations, current or prior violations of any provisions of Article 71 of Chapter 58 (Bail Bondsmen and Runners) or Article 26 Chapter 15A (Bail), or any disqualifications to engage in the bail bond business; and (iii) notifications of criminal convictions and changes of address.
- The renewal fee set out by statute.

- A complete set of fingerprints submitted in a manner prescribed by the Commissioner.

The fingerprints must be forwarded by the Commissioner to the State Bureau of Investigation for a State criminal history record check. If warranted, the State Bureau of Investigation must forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The licensee seeking renewal must pay the costs of the State and national criminal history record checks.

Section 3 of the PCS provides that the Commissioner must deny, revoke or refuse to renew a license if the licensee has been convicted on or after October 1, 2009, of a misdemeanor drug offense under the Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes. This provision would not apply to convictions for the possession or distribution of drug paraphernalia under Article 5B of Chapter 90.

This section of the PCS also provides that the Commissioner must deny a license if the applicant has been convicted of a misdemeanor drug offense under the Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes within the previous 24 months of the date of the application for the license. This provision would not apply to convictions for the possession or distribution of drug paraphernalia under Article 5B of Chapter 90.

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

S458-SMRQ-112(CSRQ-40) v2

**Kory Goldsmith, Counsel to Senate Commerce, significantly contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 458
Commerce Committee Substitute Adopted 4/22/09
Third Edition Engrossed 4/29/09

Short Title: GED HS Diploma/No Drug Convict/Bail Bondsman. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING AN APPLICANT FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER TO HAVE OBTAINED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT AND TO PROHIBIT A PERSON FROM BEING LICENSED IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b) reads as rewritten:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

...

(1a) Have obtained a high school diploma or its equivalent.

...."

SECTION 2. G.S. 58-71-80 is amended by adding a new subsection to read:

"(b1) The Commissioner shall deny, revoke, or refuse to renew any license under this Article if the applicant or licensee has been convicted of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes on or after July 1, 2009, and within the previous 24 months."

SECTION 3. This act is effective when it becomes law. Section 1 applies to applicants for licensure on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1227 A BILL TO BE ENTITLED AN ACT TO CONFORM CERTAIN NORTH CAROLINA TAX CREDITS TO THE FEDERAL NEW MARKETS TAX CREDIT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1227:
Conform Low-Income Housing Tax Credits

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 1, 2009
Introduced by:	Rep. Gibson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1227 amends the law governing the mill rehabilitation tax credit to allow the credit to be taken for qualified rehabilitation expenditures made with respect to an eligible site located in an "additionally distressed area". The bill defines the term "additionally distressed area".

CURRENT LAW:

Current law 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 development 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 development tier one, or two area determined as of the date of the eligibility certification.
- 30% of qualified rehab expenditures – if the site is located in a development tier three area.

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.

BILL ANALYSIS: House Bill 1227 expands the 40% credit for qualified rehabilitation expenditures to include those made with respect to an eligible site located in an additionally distressed area if the credit is taken for income-producing property, or of the rehabilitation expenses for non income-producing property.

The bill defines the term "additionally distressed area" as an area that:

- Is in a census tract with a poverty rate greater than 30%;
- Is in a census tract with median family income of less than 60% of statewide median family income in a non-Metropolitan Area, or less than 60% of the greater of the statewide median family income or the Metropolitan Area median family income in a Metropolitan Area; or
- Is in a census tract with an unemployment rate at least 1.5 times the national average.

If the area has a poverty rate greater than 20%, it is an additionally distressed area if one of the following criteria applies:

- It is in a census tract with median family income of less than 70% of the statewide median income in a non Metropolitan Area or less than 70% of the greater of the statewide median family income or the Metropolitan Area median family income in a Metropolitan Area; or the tract has an unemployment rate at least 1.25 times the national average.
- It is a federally designated Empowerment Zone, Enterprise Community, or Renewal Community.
- It is designated as a HUB Zone by the US Small Business Administration.
- It is a brownfield site.
- It is in a development tier one or two area, or an urban progress zone.

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

Canaan Huie, formerly Bill Drafting Attorney, substantially contributed to this summary.

H1227-SMRO-140(e1) v3

HOUSE BILL 1227

Short Title:	Conform Low-Income Housing Tax Credits.	(Public)
Sponsors:	Representatives Gibson; Goforth, Lewis, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONFORM CERTAIN NORTH CAROLINA TAX CREDITS TO THE FEDERAL NEW MARKETS TAX CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.70 reads as rewritten:

"**§ 105-129.70 Definitions.**

The following definitions apply in this Article:

(1) Additionally distressed area. – An area that meets one of the criteria in sub-subdivisions a. through c. below, or, if the area is in a census tract with a poverty rate greater than twenty percent (20%), one of the criteria in sub-subdivisions d. through h. below:

a. It is in a census tract with poverty rates greater than thirty percent (30%).

b. It is in a census tract with, if located within a non-Metropolitan Area, median family income that does not exceed sixty percent (60%) of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed sixty percent (60%) of the greater of the statewide median family income or the Metropolitan Area median family income.

c. It is in a census tract with an unemployment rate at least 1.5 times the national average.

d. It is in a census tract with one of the following: (i) if located within a non-Metropolitan Area, median family income that does not exceed seventy percent (70%) of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed seventy percent (70%) of the greater of the statewide median family income or the Metropolitan Area median family income; or (ii) an unemployment rate at least 1.25 times the national average.

e. It is a federally designated Empowerment Zone, Enterprise Community, or Renewal Community.

f. It is designated by the United States Small Business Administration as a HUB Zone to the extent the development will support businesses that obtain HUB Zone certification from the United States Small Business Administration.

g. It is a brownfield site as defined under Part 5 of Article 9 of Chapter 130A of the General Statutes.

h. It is located in a development tier one or development tier two area as defined by G.S. 143B-437.08, or an urban progress zone as defined by G.S. 143B-437.09.

~~(1)~~(1a) Certified historic structure. – Defined in section 47 of the Code.

...."

SECTION 2. G.S. 105-129.71 reads as rewritten:

"**§ 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 of at least three million dollars ($3,000,000) with respect to a certified rehabilitation of 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 a development tier one or two area, determined as of the date of the eligibility certification, or in an additionally distressed area, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For an eligible site located in a development tier three area, determined as of the date of the eligibility certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

...."

SECTION 3. G.S. 105-129.72 reads as rewritten:

"**§ 105-129.72. Credit for nonincome-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 of at least three million dollars ($3,000,000) with respect to a certified rehabilitation of 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 a development tier one or two area, determined as of the date of the eligibility certification, or in a census tract that is an additionally distressed area, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in a development tier three area.

...."

SECTION 4. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 465 A BILL TO BE ENTITLED AN ACT AMENDING THE STATE FAIR HOUSING ACT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 465:
Amend State Fair Housing Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	June 30, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 465 amends the State Fair Housing Act to designate certain activities pertaining to persons with disabilities as unlawful discriminatory housing practices regardless of whether they occur in the context of a real estate transaction.***

CURRENT LAW:

Under current law, certain activities related to making accommodations for or modifications to premises which are necessary for a handicapped person are only unlawful if the activity occurs in a real estate transaction.

BILL ANALYSIS:

Senate Bill 465 would amend the law to move these listed activities to a separate subsection and make them unlawful regardless of whether the activity occurs in the context of a real estate transaction. For example, currently, it is an unlawful discriminatory housing practice for any person in a real estate transaction, to "refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling." This bill would make this refusal unlawful in any context.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S465-SMRO-139(e1) v1

SENATE BILL 465

Short Title:	Amend State Fair Housing Act.	(Public)
Sponsors:	Senators McKissick; Atwater, Berger of Franklin, Bingham, Boseman, Clary, Dorsett, Graham, Jones, Kinnaird, Nesbitt, Shaw, Snow, Vaughan, and Weinstein.	
Referred to:	Commerce.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE FAIR HOUSING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41A-4 reads as rewritten:

"**§ 41A-4. Unlawful discriminatory housing practices.**

(a) It is an unlawful discriminatory housing practice for any person in a real estate transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status to:

(1) Refuse to engage in a real estate transaction;

(2) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

~~(2a) Refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the handicapped person's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted;~~

~~(2b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling;~~

~~(2c) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:~~

~~a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or~~

~~b. With respect to dwellings with a building entrance on an accessible route:~~

~~1. The public and common use portions are readily accessible to and usable by handicapped persons;~~

~~2. There is an accessible route into and through all dwellings and units;~~

~~3. All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;~~

~~4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;~~

~~5. Bathroom walls are reinforced to allow later installation of grab bars; and~~

~~6. Kitchens and bathrooms have space for an individual in a wheelchair to maneuver;~~

(3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction;

(4) Refuse to negotiate for a real estate transaction;

(5) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to his attention, or refuse to permit him to inspect real property;

(6) Make, print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form or application for a real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(7) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or

(8) Otherwise make unavailable or deny housing.

(b) Repealed by Session Laws 1989, c. 507, s. 2.

(b1) It is an unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status. As used in this subsection, "residential real estate related transaction" means:

(1) The making or purchasing of loans or providing financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) where the security is residential real estate; or

(2) The selling, brokering, or appraising of residential real estate.

The provisions of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

(c) It is an unlawful discriminatory housing practice for a person to induce or attempt to induce another to enter into a real estate transaction from which such person may profit:

(1) By representing that a change has occurred, or may or will occur in the composition of the residents of the block, neighborhood, or area in which the real property is located with respect to race, color, religion, sex, national origin, handicapping condition, or familial status of the owners or occupants; or

(2) By representing that a change has resulted, or may or will result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

(d) It is an unlawful discriminatory housing practice to deny any person who is otherwise qualified by State law access to or membership or participation in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate in the terms or conditions of such access, membership, or participation because of race, color, religion, sex, national origin, handicapping condition, or familial status.

(e) It is an unlawful discriminatory housing practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Chapter.

(f) It is an unlawful discriminatory housing practice to:

(1) Refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the handicapped person's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted.

(2) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling.

(3) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:

a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or

b. With respect to dwellings with a building entrance on an accessible route:

1. The public and common use portions are readily accessible to and usable by handicapped persons;

2. There is an accessible route into and through all dwellings and units;

3. All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;

4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;

5. Bathroom walls are reinforced to allow later installation of grab bars; and

6. Kitchens and bathrooms have space for an individual in a wheelchair to maneuver."

SECTION 2. G.S. 41A-5(a) is amended by adding a new subdivision to read as follows:

"**§ 41A-5. Proof of violation.**

(a) It is a violation of this Chapter if:

...

(3) A person's act or failure to act violates G.S. 41A-4(f)."

SECTION 3. This act becomes effective October 1, 2009.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 8, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell
SB 405	Real Property Sales Information.	Senator Hartsell
SB 777	Affiliate Liability For OTP Excise Tax.	Senator Garrou
SB 810	Affordable Housing/No Discrimination.	Senator McKissick
SB 831	Extend Permits Regarding Land Development.	Senator Clodfelter
SB 882	Statute of Repose/Products Liability.	Senator Hartsell

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:20 p.m. on **July 06, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, July 8, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 285	Rewrite Foreign Money Judgments Laws	Senator Hartsell
SB 405	Real Property Sales Information	Senator Hartsell
SB 882	Statute of Repose/Products Liability	Senator Hartsell
SB 810	Affordable Housing/No Discrimination	Senator McKissick
SB 777	Affiliate Liability For OTP Excise Tax	Senator Garrou
SB 831	Extend Permits Regarding Land Development	Senator Clodfelter

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, July 8, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, July 8, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Mills, Pierce, Rapp, Samuelson, Steen, Tarleton, Warren, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 777 - A BILL TO BE ENTITLED AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS. Sponsor: Senator Garrou
Senator Garrou presented SB 777 and explained that it was primarily a technical change to the other tobacco products excise tax statute so that we can conform those to the cigarette excise tax statutes. They do not cost the state money or revenues. The bill would enhance the ability of a company that RJ Reynolds purchased and moved to Winston-Salem. They built a new building. They have offered new jobs. There was no incentive money given to this company. Senator Garrou advised the Chair that the date on her bill needed to be changed. Representative Carney offered an amendment to amend the bill on page 2, line 22, by deleting "July 1, 2009" and substituting "September 1, 2009. The amendment was adopted. Discussion on the bill followed. Representative Holloway moved for a favorable report for SB 777 as amended with a re-referral to the Committee on Commerce.

SB 285 - A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Sponsor: Senator Hartsell
Senator Hartsell presented SB 285 and explained that it was identical to a bill that passed this Committee in the exact same form a couple of months ago that was initially filed by Representative Ross. SB 285 came from the General Statutes Commission. It was

associated with the Uniform Commission on State Laws. It was about circumstances, process and procedures for the adoption in North Carolina courts of foreign country money judgments. The most substantive change from our current Uniform Foreign Money Judgment laws to this actually gives our courts more discretion in adopting those foreign money judgments from the current law. It updates the language. Discussion followed. Representative Farmer-Butterfield moved for a favorable report. The motion passed.

SB 405 - A BILL TO BE ENTITLED AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS BY REQUIRING A REPORT OF SALES INFORMATION WHEN REAL PROPERTY IS TRANSFERRED. Sponsor: Senator Hartsell

There was a proposed House committee substitute before the Committee. Senator Hartsell presented SB 405 and said that it came from the Revenue Laws Study Commission. It identified a process and some additions to information that would be placed on deeds before acceptance by the county's Register of Deeds. Representative Blackwell offered Amendment #1. Representative Wilkins offered Amendment #2 but withdrew it. Amendment #1 was adopted. Representative Blackwell said that we are not trying to raise the expense for people doing closings by adding more to the closing process by adding another sheet of paper that has to be paid for separately in the Register of Deeds office. Representative Stam appeared before the Committee and said that he had discussed this with the Real Estate Section of the NC Bar Association, the NC Bar Association, Realtors, Pete Rodda, Tax Assessors Association, Michael Houser, NC Department of Revenue. They are all satisfied with this because it does not increase the cost by $1.3 million which the underlying bill would do, and it does not require a separate sheet of paper which the Register of Deeds did not want. Chip Killian, Register of Deeds Association appeared before the Committee and said that he had spoken with Senator Hartsell, and the version of the bill at hand was acceptable to them, and they supported it. With no further discussion on the bill, the Chair called for a vote in favor of the bill with Amendment #1 to be rolled into a new committee substitute with a re-ferral to the House Committee on Finance. The motion passed.

SB 882 - A BILL TO BE ENTITLED AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.
Sponsor: Senator Hartsell

The Chair called on Senator Hartsell to explain SB 882. She advised Committee members that there had been great interest from all parties and that the bill would be deferred for one week to give those parties more time to converse. In light of that, Representative Dickson said that she hoped to have a better consensus when the Committee met again.

SB 810 - A BILL TO BE ENTITLED AN ACT PROVIDING THAT IT IS A VIOLATION OF THE STATE'S FAIR HOUSING ACT TO DISCRIMINATE IN LAND-USE DECISIONS OR THE PERMITTING OF DEVELOPMENT BASED ON THE FACT THAT A DEVELOPMENT CONTAINS AFFORDABLE HOUSING UNITS.
Sponsor: Senator McKissick

Senator McKissick presented SB 810 and said that it was supported by the North Carolina Association of Realtors, Home Builders Association, North Carolina Apartment Association and Consumer Advocates. He knew of no opposition to it. Discussion followed. Representative Goforth said that it was a good bill and moved for a favorable report for SB 810 with a re-referral to the Committee on Judiciary III. The motion passed.

The meeting adjourned at 1:49 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stewart	NC Chamber
Hal Jones	Attorney Raleigh
Andrew Castle	DLC Assoc.
X	
John Brondich	Astra Zeneca
George Washington	Cherry tree Assoc.
Claude Gilliland	G.S.K.
Steve Brewer	EMBARQ
Maria Monaghan Payne Kenneth	
Joe Lamier	SCO Wicker

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Annaliese Dolph	DRNC
Michael Murray	DRNC
John Rainey	Altria
Dick Carlton	[illegible]
Tony Tetterton	FAC
Lew Ebert	NC Chamber
Tommy Suter	Novartis
Elizabeth Dalton	NCRMA
Gregg Thompson	NFIB
Marty Bocock	Embarq
[illegible]	NFIB

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC Home Builders
Lisa Martin	
Jim Minton	Raleigh/Wake HBA
Frank Wesner	Ole Southe Homes
Mike Carpenter	NC Home Builders
JAY TREHY	NCAJ
ELAINE CORSKI	NCAJ

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Parley	NCAJ
Dick Taylor	NCAJ
Emily Gallimore	NCBA
Lauren Whaley	NC Credit Union League
Alex McLamb	Raleigh
	Raleigh
Henry Hinton	N.C.B.A.
	NWC
Emily Welborne	TPG
Gene Ainsworth	A&A
	WCSR

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Taylor	NCBIO
Alan Woodard	NCDOR
AL MILAK	NCDOR
Colleen Kochanek	KLG
John Merrill	Merc/IC
LC Penegar	ONCIC
Preston Howard	ONCIC
Daniel Bacon	K+L GATES
John Goodman	2e Change
Spencer Parris	NCAJ
Kirk Warner	NCAOA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troutman	NCACC
Leon M Killian	Nelson mullins
AMANDA GARRETT	NCARD
Patrick Buffkin	NMMS
Alexandra Embry	DENR
Robin Smith	DENR
Floyd M. Lewis	General Statutes Commission
P. Bly Hall	do do
[illegible]	Forsyth Co.
Jim Blackburn	NC Association of County Commissioners
Burton Craige	NCAJ
Doug Kinney	NCAJ

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kiger	NCADA
Ken Kyre	NCADA
Elizabeth Wood	Johnson + Johnson
Barbara Cansler	BCGR
[illegible]	Dominion
[illegible]	JD, NC, PA
[illegible]	GSK
[illegible]	NC DOR
Suzanne Harris	HBA-RWC
Victoria Hawkins	Bone + Assoc.
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 8, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Hultin	School Bd.

HOUSE PAGES

NAME OF COMMITTEE Commerce Sm. Business DATE 7-8-09

1. Name: Yeya Love
   County: Wake
   Sponsor: Rep Stam
2. Name: Megan Jarrell
   County: Randolph
   Sponsor: Rep. Hurley
3. Name: Bradley James
   County: New Hanover
   Sponsor: Mr Collins
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: Charles Williams
2. Name: Trey Raley
3. Name:
4. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 777 A BILL TO BE ENTITLED AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS.

☒ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

_____ The bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777

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

S777-ALA-19 [v.2]

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

Date _____,2009

Representative Carney

moves to amend the bill on page 2, line 22, by deleting "July 1, 2009" and substituting "September 1, 2009".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE BILL 777:
Affiliate Liability for OTP Excise Tax

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 7, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Martha Walston Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 777 amends the definition of an 'integrated wholesale dealer' for purposes of the excise tax on other tobacco products (OTP) so that an affiliate of a manufacturer of OTP may be treated the same as the manufacturer for purposes of allowing relief from paying the excise tax. The tax would become payable by the wholesale or retail dealer to whom the integrated wholesale dealer sold the product.

The 2nd edition redrafts the language to more effectively accomplish the purpose of the legislation.

CURRENT LAW: The excise tax on OTP is paid by the wholesale dealer or retail dealer who first acquires or otherwise handles OTP. The excise tax rate on OTP is 10% of the cost price of the product.

By definition, all manufacturers are wholesale dealers. A manufacturer who is not a retail dealer and who ships OTP to either a wholesale dealer or a retail dealer may apply to the Secretary of Revenue to be relieved of paying the tax. Once granted permission, a manufacturer may choose not to pay the tax, which would result in the tax being paid by the wholesale or retail dealer to whom the manufacturer sells the product.

In 2007, the General Assembly defined the term 'integrated wholesale dealer' and allowed an integrated wholesale dealer to be treated as the same entity as the manufacturer with whom it is an affiliate for purposes of allowing relief from paying the excise tax on OTP. The change in 2007, for example, enabled Conwood Sales, an affiliate of Conwood Company, to be relieved of paying the tax on the OTP it received from Conwood Company since Conwood Company could be relieved of paying the tax.

BILL ANALYSIS: An integrated wholesale dealer is defined as a wholesale dealer who is an affiliate of a manufacturer of other tobacco products and is the only person to whom the manufacturer sells its products. Senate Bill 777 would eliminate the requirement in the definition of 'integrated wholesale dealer' that the manufacturer sells its entire product to its affiliate and it would modify the definition of manufacturer to include a contract manufacturer. Currently contract manufacturers are not explicitly included in that definition and, instead, are included in the definition of cigarette distributor.

The change to the definition of integrated wholesale dealer allows an affiliate of a manufacturer of OTP to be treated the same as the manufacturer with respect to payment of the OTP excise tax. G.S. 105-113.35 establishes the procedure by which a manufacturer can be relieved of payment of the OTP excise tax. Under the revised definition, that procedure would apply to all affiliates of a manufacturer.

The change to the definition of manufacturer makes its clear that the process in G.S. 105-113.35 applies to a person who contracts for the manufacture of OTP as well as a person who manufactures OTP directly.

EFFECTIVE DATE: The bill becomes effective July 1, 2009.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S777-SMLA-62(e2) v2

SENATE BILL 777
Finance Committee Substitute Adopted 5/5/09

Short Title: Affiliate Liability for OTP Excise Tax. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1a) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

(2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.

(3) Distributor. – Either of the following:

a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.

b. ~~A person who manufactures or produces cigarettes or causes them to be manufactured or produced.~~manufacturer of cigarettes.

(4) Repealed by Session Laws 1991, c. 689, s. 267.

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, ~~is the only person to whom the manufacturer sells its products,~~ and is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who manufactures ~~or produces~~ tobacco ~~products.~~products or contracts with another person to manufacture tobacco products.

(7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.
(8) Person. – Defined in G.S. 105-228.90.
(9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.
(10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
(10a) Secretary. – The Secretary of Revenue.
(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
(13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.
(14) Wholesale dealer. ~~– A~~ Either of the following:
a. A person who ~~makes tobacco products other than cigarettes or who~~ acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.
b. A manufacturer of tobacco products other than cigarettes."

SECTION 2. This act becomes effective July 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION .

SB 285

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

HANDOUT #1

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 17, 2009

TO: House Committee on Commerce, Small Business, and Entrepreneurship
FROM: General Statutes Commission
RE: **Senate Bill 285 (Rewrite Foreign Money Judgments Laws)**

General Comments

This bill is based on the Uniform Foreign-Country Money Judgments Recognition Act (new Uniform Act) as approved in 2005 by the National Conference of Commissioners on Uniform State Laws. The new Uniform Act replaces the earlier Uniform Foreign Money Judgments Recognition Act (old Uniform Act), enacted in this State in 1993 as Article 18 of Chapter 1C of the General Statutes, G.S. 1C-1800 et seq. Like the old Uniform Act, the new Uniform Act provides a process for the recognition of money judgments rendered in other countries.

The new Uniform Act continues the basic policies and approach of the old Uniform Act but updates the old Uniform Act to clarify its provisions and correct problems created by judicial interpretations. The new Uniform Act:

- Updates and clarifies the definitions.
- Reorganizes and clarifies the scope provisions.
- Allocates the burden of proof.
- Establishes a procedure for seeking recognition or nonrecognition of a foreign-country money judgment.
- Clarifies and, to a limited extent, expands the grounds for denying recognition.
- Establishes a statute of limitations for recognizing foreign-country money judgments.

The bill also authorizes the printing of drafters comments and provides an effective date and applicability provision.

Specific Comments

Section 1 repeals Article 18 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign Money Judgments Recognition Act" (Article 18).

Section 2 enacts Article 20 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act" (new Article 20).

Section 1C-1850 provides that new Article 20 may be cited as the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act."

Section 1C-1851 defines new terms "foreign country" and "foreign-country judgment" to replace the current terms "foreign state" and "foreign judgment" in order to clarify that new Article 20 does not apply to recognition of sister-state judgments. The definition of "foreign country" is substantially similar to the definition of "foreign state." The definition of "foreign-country judgment" is based on the definition of "foreign judgment", except that the part of the definition setting out the scope of Article 18 has been moved to Section 1C-1852 of new Article 20.

Section 1C-1852 provides applicability provisions and a saving clause. Subsections (a) and (b), consistent with Article 18, provide that new Article 20 applies to a foreign-country judgment that grants or denies recovery of a sum of money and that is final, conclusive and enforceable under the law of the foreign country where it was rendered, unless the judgment (i) is for taxes, (ii) constitutes a fine or other penalty, or (iii) is for alimony, support, or maintenance in matrimonial or family matters. Subsection (c), which is new, places the burden of proof of showing that new Article 20 applies to a foreign-country judgment on the party seeking recognition. Subsection (d), like current G.S. 1C-1807, provides that new Article 20 does not prevent a court from applying common law principles of comity or other applicable law to recognize a foreign-country judgment to which the new Article 20 does not apply.

Section 1C-1853 provides standards for recognition and nonrecognition of foreign-country judgments. Subsections (f) through (i) are entirely new. Subsection (a) requires the court to recognize a foreign-country judgment to which new Article 20 applies, except as otherwise provided in the section. Subsection (b) states mandatory grounds for denying recognition that are essentially the same as under Article 18.

Subsection (c) states additional grounds for denying recognition. A court that finds that any of these grounds exist must deny recognition of a foreign-country money judgment unless the court determines as a matter of law that recognition would nevertheless be reasonable under the circumstances. Under Article 18, in contrast, denial of recognition on these grounds is discretionary. The additional grounds stated in subdivisions (c)(7) and (c)(8) are new. This section does not bring forward current G.S. 1C-1804(b)(7) (allowing a court to deny recognition of a foreign-money judgment if the court that rendered the judgment would not recognize a comparable judgment of this State).

Subsections (d) and (e) adopt a modified last-in-time rule for recognition of conflicting foreign-country money judgments. Assuming judgments that are otherwise entitled to recognition, subsection (d) requires the court to recognize the later judgment unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances, and subsection (e) requires the court to deny recognition of an earlier judgment unless the court determines that recognition would nevertheless be reasonable under the circumstances.

Subsections (f) through (h) allocate the burden of proof. Subsection (f) places on the party resisting recognition of a judgment under subsection (b) the burden of establishing that one of the mandatory grounds for nonrecognition exists. Subsection (g) similarly places on the party

resisting recognition under subsection (c) the burden of establishing that one of the additional grounds for nonrecognition exists. If such a ground is established, however, the party seeking recognition has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances. Subsection (h) places the burden on the party resisting recognition under either subsection (d) or (e) to establish that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. A party resisting recognition under subsection (d) also has the burden of showing that nonrecognition of the later judgment would be reasonable under the circumstances; a party seeking recognition under subsection (e) has the burden of establishing that recognition of an earlier judgment would be reasonable under the circumstances.

Subsection (i) requires a court, when ruling on recognition of a foreign-country judgment, to state the facts specially and state separately its conclusions of law. When the court is the trier of fact, the facts will be stated in the findings of fact. When the court is ruling on a motion to dismiss, where the nonmovant's factual allegations are treated as true, or a motion for summary judgment, where there is no issue of material fact, the court will need to set out those facts that the court considered to be material.

Section 1C-1854 lists in subsection (a) bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction over the defendant. These bases for personal jurisdiction are in substance the same as current law except that subdivision (a)(4) has been modified to include other forms of business organizations and subdivision (a)(7) is new. New subdivision (a)(7) provides that the foreign court has personal jurisdiction over the defendant if there was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Subsection (b) clarifies that the bases for personal jurisdiction listed in subsection (a) are not exclusive; a court of this State may find that the foreign court had personal jurisdiction over the defendant on some other basis.

Section 1C-1855 sets out the procedures by which the issue of recognition or nonrecognition of a foreign-country judgment may be raised. If recognition is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition. If recognition or nonrecognition is sought in some other action the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

Section 1C-1856 sets out the effect of recognition of a foreign-country judgment. A judgment recognized under new Article 20 is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive, but in contrast to Article 18, it is enforceable in the same manner and to the same extent as a judgment rendered in this State. Under Article 18, a judgment once recognized must be enforced under Article 17 of Chapter 1C of the General Statutes, which is cumbersome and partly duplicates the provisions of Article 18.

Section 1C-1857 is substantively the same as current law in providing that the court may stay any proceedings with regard to a foreign-country judgment pending appeal of the foreign-country judgment.

Section 1C-1858 is new. It expressly provides that an action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the judgment is effective in the foreign country or 10 years from the date that the judgment became effective in the foreign country.

Section 1C-1859 provides for uniformity of application and construction of new Article 20.

Sections 3 and 4, respectively, authorize the printing of drafters comments and provide that the bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 285*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION .

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for
SB 405 A BILL TO BE ENTITLED AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS BY REQUIRING A REPORT OF SALES INFORMATION WHEN REAL PROPERTY IS TRANSFERRED.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 405*
Commerce Committee Substitute Adopted 4/1/09
Finance Committee Substitute Adopted 4/29/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S405-PCS85260-LA-26

Short Title: Real Property Sales Information. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-317.2. Report on transfers of real property.**

To facilitate the accurate appraisal of real property for taxation, the information listed in this section must be included in each deed conveying property. The following information is required:

(1) The name of each grantor and grantee and the mailing address of each grantor and grantee.

(2) A statement whether the property includes the primary residence of a grantor.

Failure to comply with this section does not affect the validity of a duly recorded deed. This section does not apply to deeds of trust, deeds of release, or similar instruments."

SECTION 2. G.S. 105-228.32 reads as rewritten:

"**§ 105-228.32. Instrument must be marked to reflect tax paid.**

A person who presents an instrument for registration must report to the Register of Deeds the amount of tax due. It is the duty of the person presenting the instrument for registration to report the correct amount of tax due. Before the instrument may be recorded, the Register of Deeds must collect the tax due and mark the instrument to indicate that the tax has been paid and the amount of the tax paid."

SECTION 3. This act becomes effective January 1, 2010.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 405*

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

S405-ALA-18 [v.5]

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

Date _____ ,2009

Representative Blackwell

moves to amend the bill on page 1, lines 4 through 21, by rewriting those lines to read:
"PROPERTY TAX APPRAISALS.";

And on page 1, lines 27 through 35, by rewriting those lines to read:
"this section must be included in each deed conveying property. The following information is required:

(1) The name of each grantor and grantee and the mailing address of each grantor and each grantee.

(2) A statement whether the property includes the primary residence of a grantor.

Failure to comply with this section does not affect the validity of a duly recorded deed. This section does not apply to deeds of trust, deeds of release, or similar instruments.";

and on page 2, lines 1 through 6, by rewriting those lines to read:
"**SECTION 2.** G.S. 105-228.32 reads as rewritten:
'"**§ 105-228.32. Instrument must be marked to reflect tax paid.**

A person who presents an instrument for registration must report to the Register of Deeds the amount of tax due. It is the duty of the person presenting the instrument for registration to report the correct amount of tax due. Before the instrument may be recorded, the Register of Deeds must collect the tax due and mark the instrument to indicate that the tax has been paid and the amount of the tax paid.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

S405-ALA-18-V-5

Rep. Wilkins withdrew Amendment #2.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 405*

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

S405-ARQ-18 [v.2]

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

Date _____,2009

Representative Wilkins

moves to amend the bill on page 1, line 35 by rewriting the line to read:

" (6) Whether the transaction is the result of an auction or foreclosure sale.
(7) Whether the property qualifies as the grantor's principal residence under section 121 of the Code."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 405:
Real Property Sales Information

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 1, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***SB 405, a recommendation of the Revenue Laws Study Committee, would prohibit a register of deeds from accepting for registration a deed transferring real property unless certain sales information is also recorded with the deed. The purpose of filing the sales information would be to facilitate the accurate appraisal of real property for taxation.***

CURRENT LAW: Real property must be appraised for property tax purposes at least every eight years. The appraisal value must be its market or true value as of January 1 of the year of the general reappraisal.[1] Market or true value is the price at which property would change hands between a willing and financially able buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the uses to which property is adapted and for which it is capable of being used. To assist the counties in determining the true value, the Department of Revenue conducts yearly sales assessment ratio studies for each county. These studies compare the appraised value of parcels with the sales price. The closer the comparison is to 100%, the closer the property's appraised value is to the fair market value. Consequently, more frequent reappraisal schedules lessen the discrepancy between the appraised value of the property and the true value of the property.

Prior to the 2008 Session, the Revenue Laws Study Committee adopted a proposal to change the eight year appraisal cycle to a four year cycle. The version of this proposal ratified in S.L. 2008-146 requires advancement of the eight year schedule only for a county with a population of 75,000 or greater and when the sales assessment ratio for that county drops below .85 or becomes greater than 1.15.[2] For these counties, new values must be implemented by January 1 of the third year following notice by the Department of the sales assessment ratio study. All other counties retain the eight-year schedule.

BILL ANALYSIS: Senate Bill 405 would require that the following sales information be provided in a report before a deed transferring property may be accepted by the county's register of deeds:

1. The name of each grantor and grantee.
2. A brief description of the property.
3. The total sales price.
4. Whether the transaction involves relatives or related businesses.
5. Whether personal property was conveyed with the transaction.
6. Whether the transaction is the result of an auction or foreclosure sale.

The above information would be reported on a form developed by the Department of Revenue and would be recorded with the deed. Failure to comply does not affect the validity of a duly recorded deed.

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[1] The following types of property are appraised at their use value: farmland, working waterfront property, and wildlife conservation property.

[2] Based upon the 2007 population estimates and 2008 sales ratios, only ten counties are affected by the 2008 legislation.

EFFECTIVE DATE: The bill would become effective January 1, 2010.

BACKGROUND: The proposal is similar to a recommendation of the 2007-2008 Revenue Laws Study Commission Report to the 2009 General Assembly. This proposed statewide sales information report was supported by comments made during meetings with tax assessors from large urban counties and smaller rural counties. Based upon information compiled by the Department of Revenue, 50 counties are already sending out letters requesting information to confirm a property transfer and six counties are requiring a transfer affidavit.

S405-SMRQ-106(e3) v2

**Martha Walston, Counsel to Senate Finance, and Kory Goldsmith, Counsel to Senate Commerce, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 405*
Commerce Committee Substitute Adopted 4/1/09
Finance Committee Substitute Adopted 4/29/09

Short Title: Real Property Sales Information. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS BY REQUIRING A REPORT OF SALES INFORMATION WHEN REAL PROPERTY IS TRANSFERRED.

Whereas, the Constitution of North Carolina requires that property must be taxed by uniform rule and that every classification must be made by general law uniformly applicable in every county, city and town, and other unit of local government; and

Whereas, the North Carolina General Statutes require that all property, real and personal, must so far as practicable be appraised or valued at its true value which is interpreted as meaning market value; and

Whereas, taxes levied by all counties and municipalities must be levied uniformly on assessments determined by the true value of most property; and

Whereas, to help ensure that tax values of real property reflect fair market value when the counties value their property for property tax purposes, the North Carolina Department of Revenue must conduct annual studies of the ratio of the appraised value of real property to its true value and establish for each county the median ratio as determined by the study for each calendar year; and

Whereas, one of the most accurate and cost-efficient methods of producing a fair revaluation of property based on the true value of the property is to require that sales information reports be filed with the county whenever property changes hands; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-317.2. Report on transfers of real property.**

To facilitate the accurate appraisal of real property for taxation, the information listed in this section must be reported on a form developed by the Department of Revenue. G.S. 161-32 requires that the report be recorded with the deed transferring the real property. The following information is required:

(1) The name of each grantor and grantee and the address of each grantee.
(2) A brief description of the property.
(3) The total sales price.
(4) Whether the transaction involves relatives or related businesses.
(5) Whether personal property was conveyed with the transaction.
(6) Whether the transaction is the result of an auction or foreclosure sale."

SECTION 2. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-32. Report on transfer of real property.**

The register of deeds may not accept for registration a deed transferring real property unless a sales information report required by G.S. 105-317.2 is recorded with the deed. Failure to comply with this section does not affect the validity of a duly recorded deed."

SECTION 3. This act becomes effective January 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 882
Judiciary I Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S882-CSRN-41 [v.1]

6/30/2009 1:35:53 PM

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"**§ 1-50. Six years.**

(a) Within six years an action –

...

~~(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. G.S. 99B-2 reads as rewritten:

"**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

...

(b) A claimant who is a buyer, or a lessee as defined in ~~the Uniform Commercial Code,~~ G.S. 25-2A-103(1)(n), of the product involved, or who is a member or a guest of a member of the family of the ~~buyer,~~buyer or lessee, a guest of the ~~buyer,~~buyer or lessee, or an employee of the ~~buyer~~ buyer or lessee may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action."

SECTION 3. Chapter 99B of the General Statutes is amended by adding a new section to read:

"**§ 99B-7. Limitation of actions; statute of repose.**

(a) The purpose of this section is to define in a single statute the time limits for commencing product liability actions and to protect the citizens, manufacturers, and sellers of North Carolina.

(b) All product liability actions, except those for wrongful death, shall be commenced within three years of the date on which the property damage or injury complained of occurs.

(c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be commenced within two years of the date of death, so long as the decedent's claim would not

have been barred on the date of death by the provisions of subsections (d) and (e) of this section.

(d) Except as provided in subsection (f) of this section, all product liability actions against manufacturers shall be commenced as follows:

(1) For products manufactured in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products manufactured outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(e) Except as provided in subsection (f) of this section, all product liability actions against sellers shall be commenced as follows:

(1) For products sold or leased by the defendant seller in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products sold or leased by the defendant seller outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the seller sold or leased the product, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the seller sold or leased the product does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(f) The statutes of limitation and repose for product liability actions shall be subject to the tolling provisions of G.S. 1-17 and G.S. 1-22."

SECTION 4. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not effect the application of G.S. 1-50(5), and is not intended to abrogate *Wilder v. Amatex Corp.*, 314 N.C. 550 (1985) or *Hyer v. Pittsburgh Corning Corp.*, 790 F.2d 30 (1986).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 882
Judiciary I Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/12/09

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors:

Referred to:

March 26, 2009

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SECTION 2. G.S. 99B-2 reads as rewritten:

"**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

...

(b) A claimant who is a buyer, or a lessee as defined in ~~the Uniform Commercial Code,~~ G.S. 25-2A-103(1)(n), of the product involved, or who is a member or a guest of a member of the family of the ~~buyer,~~buyer or lessee, a guest of the ~~buyer,~~buyer or lessee, or an employee of the ~~buyer~~ buyer or lessee may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action."

SECTION 3. Chapter 99B of the General Statutes is amended by adding a new section to read:

"**§ 99B-7. Limitation of actions; statute of repose.**

(a) The purpose of this section is to define in a single statute the time limits for commencing product liability actions and to protect the citizens, manufacturers, and sellers of North Carolina.

(b) All product liability actions, except those for wrongful death, shall be commenced within three years of the date on which the property damage or injury complained of occurs.

(c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be commenced within two years of the date of death, so long as the decedent's claim would not have been barred on the date of death by the provisions of subsections (d) and (e) of this section.

(d) Except as provided in subsection (f) of this section, all product liability actions against manufacturers shall be commenced as follows:

(1) For products manufactured in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products manufactured outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(e) Except as provided in subsection (f) of this section, all product liability actions against sellers shall be commenced as follows:

(1) For products sold or leased by the defendant seller in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products sold or leased by the defendant seller outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the seller sold or leased the product, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the seller sold or leased the product does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(f) The statutes of limitation and repose for product liability actions shall be subject to the tolling provisions of G.S. 1-17 and G.S. 1-22."

SECTION 4. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not effect the application of G.S. 1-50(5), and is not intended to abrogate *Wilder v. Amatex Corp.*, 314 N.C. 550 (1985) or *Hyer v. Pittsburg Corning Corp.* 790 F.2d 30 (1986).

SENATE BILL 882:
Statute of Repose/Products Liability

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	July 1, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S882-CSRN-41		Committee Co-Counsel

SUMMARY: ***Senate Bill 882 would clarify and reform the statutes of limitation and repose in product liability actions.*** ***The Proposed Committee Substitute corrects a spelling error.***

[As introduced, this bill was identical to H851, as introduced by Rep. Faison, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.]

CURRENT LAW & BILL ANALYSIS:

Section 1. Repeals G.S. 1-50(a)(6), North Carolina's current statute of repose for products liability. That statute prohibits actions for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than 6 years after the date of initial purchase for use or consumption.

Section 2. G.S. 99B-2(b) permits a buyer of the product involved, a member of the buyer's family or guest of a member of the buyer's family, a guest of the buyer, or an employee of the buyer to bring a product liability action directly against the manufacturer of the product for breach of implied warranty. A product liability action is defined as including "any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product." G.S. 99B-1(3).

Section 2 would also allow lessees, members of the lessee's family or their guest, guests of the lessee, or employees of the lessee to bring a product liability action directly against the manufacturer for breach of implied warranty.

Section 3. Enacts a new statute to implement a statute of limitations on product liability actions and implements a statute of repose on product liability actions.

G.S. 99B-7(b) is a **statute of limitations on all product liability actions except wrongful death.**

- The action shall be commenced within 3 years of the date on which the property damage or injury occurred (except those for wrongful death).

G.S. 99B-7(c) is a **statute of limitations on wrongful death product liability actions.**

- The action shall be commenced within 2 years of the date of death, provided that the claim would not have been barred by the statute of repose for product liability actions.

G.S. 99B-7(d) is a **statute of repose on all product liability actions against manufacturers.**

- If the action is involving a product **manufactured in North Carolina,** the action is to be brought within 6 years after the product was first sold or leased for use or consumption.
- If the action is involving a product **manufactured outside North Carolina,** then the statute of repose applicable to the jurisdiction of manufacture applies, but in no event less than 6 years (after the product was first sold or leased for use or consumption). In the instance the jurisdiction of manufacture does not have a statute of repose, then only the statute of limitations in G.S. 99B-7 apply.

G.S. 99B-7(e) is a **statute of repose on product liability actions against sellers.**

- If the action is involving a **seller in North Carolina,** the action is to be brought within 6 years after the product was first sold or leased for use or consumption.
- If the action is involving a **seller outside North Carolina,** then the statute of repose applicable to the jurisdiction of manufacture applies, but in no event less than 6 years. In the instance the jurisdiction of manufacture does not have a statute of repose, then only the statute of limitations in G.S. 99B-7 apply.

G.S. 99B-7(f) provides that both the statutes of limitation and repose may be tolled for disability (G.S. 1-17) and death (G.S. 1-22).

EFFECTIVE DATE: This act becomes October 1, 2009, and applies to actions accruing on or after that date. This act shall not effect the application of G.S. 1-50(5), and is not intended to abrogate *Wilder v. Amatex Corp.*, 314 N.C. 550 (1985) or *Hyer v. Pittsburgh Corning Corp.*, 790 F.2d 30 (1986).

BACKGROUND:

Statute of Repose: A statute barring any suit that is brought after a specified time **since the defendant acted** (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury. Black's Law Dictionary, 8th ed.

Statute of Limitations: A law that bars claims after a specified period; specifically a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). Black's Law Dictionary, 8th ed.

The cases referenced in the effective date, *Wilder* and *Hyer,* determined that North Carolina's products liability statute of repose does not apply to diseases. *See Wilder v. Amatex Corp.*, 314 N.C. 550, 336 S.E.2d 66 (1985)(holding that the statute of repose did not bar plaintiff's claim because occupational diseases, such as asbestosis, do not manifest themselves until many years after exposure to the product and no injury occurs until the date the disease is diagnosed); *see also Hyer v. Pittsburgh Corning Corp.*, 790 F.2d 30 (1986)(confirming that North Carolina's statute of repose does not apply to disease-based claims).

S882-SMRN-102(CSRN-41) v2

R. Erika Churchill contributed substantially to the drafting of this summary.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 810 A BILL TO BE ENTITLED AN ACT PROVIDING THAT IT IS A VIOLATION OF THE STATE'S FAIR HOUSING ACT TO DISCRIMINATE IN LAND-USE DECISIONS OR THE PERMITTING OF DEVELOPMENT BASED ON THE FACT THAT A DEVELOPMENT CONTAINS AFFORDABLE HOUSING UNITS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 810:
Affordable Housing/No Discrimination

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	June 30, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***Senate Bill 810 amends the State Fair Housing Act to make it an unlawful discriminatory housing practice to discriminate in land-use decisions or the permitting of developments based on the fact that a development would contain affordable housing units for those with incomes below 80% of the area median income. The bill provides that it is not discrimination if the decisions are based on considerations of limiting high concentrations of affordable housing.***

CURRENT LAW:

Under current law, the NC Fair Housing Act makes it unlawful to discriminate in housing based on race, color, religion, sex, national origin, handicapping condition, or familial status. The act lists a number of unlawful housing practices, including:

- Discrimination in real estate transactions.
- Discrimination in the making or purchasing of loans secured by residential real estate, or in the selling, brokering, or appraisal of residential real estate.
- Discrimination resulting from representing that an area has or will change with respect to the race, color, religion, sex, national origin, handicapping condition, or familial status of the residents or from representing that a change in an area has or will result in lower property values, an increase in crime, or a decline in the quality of schools.
- Denying an otherwise qualified person membership in a real estate broker's organization, multiple listing service, or other organization or facility related to the business of making real estate transactions.
- Coercing, intimidating, threatening or interfering with a person in the exercise of any right granted or protected by the act.

BILL ANALYSIS:

Senate Bill 810 adds a new item to the list of unlawful housing practices. The bill makes it unlawful to make a land-use decision or to issue or refuse to issue a permit for development based on race, color, religion, sex, national origin, handicapping condition, familial status, or the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below 80% of the area's median income. However, it is not unlawful if land-use or permitting decisions are based on considerations of limiting high concentrations of affordable housing.

The bill also adds discrimination based on affordable housing to the section stating the standard for proof of a violation.

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

S810-SMRO-137(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 810
Commerce Committee Substitute Adopted 5/7/09
Third Edition Engrossed 5/12/09

Short Title: Affordable Housing/No Discrimination. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT IT IS A VIOLATION OF THE STATE'S FAIR HOUSING ACT TO DISCRIMINATE IN LAND-USE DECISIONS OR THE PERMITTING OF DEVELOPMENT BASED ON THE FACT THAT A DEVELOPMENT CONTAINS AFFORDABLE HOUSING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41A-4 is amended by adding a new subsection to read as follows:

"(f) It is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on race, color, religion, sex, national origin, handicapping condition, familial status, or, except as otherwise provided by law, the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing."

SECTION 2. G.S. 41A-5(a) reads as rewritten:

"(a) It is a violation of this Chapter if:

(1) A ~~person by his~~ person's act or failure to act ~~intends~~ is intended to discriminate against ~~a~~ another person. A person intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4 ~~he~~ the person was motivated in full, or in any part at all, by race, color, religion, sex, national origin, handicapping condition, ~~or familial status.~~familial status or, in the case of land-use decisions or in the permitting of development, the person was motivated in full, or in any part at all, by the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing. An intent to discriminate may be established by direct or circumstantial evidence; or

(2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person of a particular race, color, religion, sex, national origin, handicapping condition, ~~or familial status.~~familial status or, in the case of land-use decisions or in the permitting of development, the person was motivated in full, or in any part at all, by the

fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing. ~~However, it~~ It is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that ~~his~~ the action or inaction was motivated and justified by business necessity."

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

NOTE:

The following bill will be first on the agenda Wednesday, July 15, 2009, 1:00 P.M., RM. 1228 LB:

SB 831 – A BILL TO BE ENTITLED AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 831
Commerce Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 5/25/09

Short Title: Extend Permits Regarding Land Development. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension Act of 2009."

SECTION 2. The General Assembly makes the following findings:

(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including homebuilders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes; layoffs, and scaled back growth plans.

(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

(5) The process of obtaining the myriad other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) Obtaining extensions of approvals granted by State government is frequently impossible, always difficult, and always expensive, and no policy reason is served by the expiration of these permits, which were approved only after thorough review of the application.

(15) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

SECTION 3. Definitions. – As used in this act, the following definitions apply:

(1) Approval. – Except as otherwise provided in Section 4 of this act, any detailed statement by a State agency under G.S. 113A-4; any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8; any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes; any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes; any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes; any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes; any building permit issued under Article 9 of Chapter 143 of the General Statutes; any discharge, nondischarge, or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes; any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes; any water quality certification under Article 21 of Chapter 143 of the General Statutes; any air quality permit issued by the Environmental Management Commission under Article 21B of the General Statutes; any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes; any approval by a city of sketch plans, preliminary plats, or plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes; any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes; when the approval under this subdivision pertains to the development of land or to the provision of water or wastewater services by a government entity and whether the approval under this subdivision is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement, or any other executive or administrative decision that allows the development or provision of services to proceed.

(2) Area of environmental concern. – An area designated under G.S. 113A-113 by the Coastal Resources Commission.

(3) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

(4) Extension period. – The period beginning January 1, 2007, and continuing through December 31, 2010.

(5) Government. – Any municipal, county, regional, or State government, or any agency, department, commission, or other instrumentality thereof.

SECTION 4.(a) For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension

period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period. Nothing in this act shall shorten the duration that any approval would have had in the absence of this act, nor shall this act prohibit the granting of such additional extensions as are provided by law when the tolling granted by this act expires.

SECTION 4.(b) Nothing in this act shall be deemed to extend or purport to extend:

(1) Any permit or approval under Section 3 of this act when the permit or approval is for a development project that has been substantially altered since the permit or approval was granted, as determined by the government entity that granted the permit or approval.

(2) Any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or to any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

(3) Any Department of Transportation permit other than a right-of-way permit.

SECTION 4.(c) This act shall not affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued during the extension period.

SECTION 4.(d) Nothing in this act shall affect the ability of the Secretary of Environment and Natural Resources to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Department of Environment and Natural Resources. Nothing in this act shall affect the ability of the Environmental Management Commission to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Environmental Management Commission.

SECTION 4.(e) In the event that any approval tolled pursuant to this act is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the effective date of this act. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to this act shall be allocated in order of the granting of the original approval of the connection.

SECTION 4.(f) Nothing in this act shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

SECTION 5. Each State agency shall, within 30 days after the effective date of this act, place a notice in the North Carolina Register tolling all approvals in conformance with this act.

SECTION 6. The provisions of this act shall be liberally construed to effectuate the purposes of this act.

SECTION 7. This act is effective when it becomes law.

PUBLIC BILL

~~Proposed~~ House Committee Substitute For
S.B. 831

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

Introduced by Senator(s) Cloadfelter

Principal Clerk's Use Only

Committee on Environment
ority being present, having considered
ill, recommend that it do ✓ pass,

Rep. Allen
For the Committee

l be re-referred to Com.
Commerce
House

FAVORABLE TO COMM. SUB
- UNFAVORABLE TO BILL
S.S.

MAY 25 2009

~~AND PLACED ON~~
~~CALENDAR FOR~~

re. of Commerce

2nd Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 15, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: **Add SB 580 – N.C. LIFE SCIENCE DEVELOPMENT CORP. ACT**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1336	Amend Irrigation Contractors' Licensing Laws.	Representative Gibson, III
SB 117	Clarifying Development Moratoria Authority.	Senator Hoyle
SB 308	Low Profit Limited Liability Company.	Senator Jacumin
SB 580	N.C. Life Science Development Corp. Act.	Senator Hoyle
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Senator Foriest
SB 831	Extend Permits Regarding Land Development.	Senator Clodfelter
SB 882	Statute of Repose/Products Liability.	Senator Hartsell
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:15 p.m. on **July 14, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 15, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Add SB 308 – Low Profit Limited Liability Company.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1336	Amend Irrigation Contractors' Licensing Laws.	Representative Gibson, III
SB 117	Clarifying Development Moratoria Authority.	Senator Hoyle
SB 308	Low Profit Limited Liability Company.	Senator Jacumin
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Senator Foriest
SB 831	Extend Permits Regarding Land Development.	Senator Clodfelter
SB 882	Statute of Repose/Products Liability.	Senator Hartsell
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10:35 a.m.** on **July 14, 2009.**

☐ Principal Clerk

☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 15, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1336	Amend Irrigation Contractors' Licensing Laws.	Representative Gibson, III
SB 117	Clarifying Development Moratoria Authority.	Senator Hoyle
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Senator Foriest
SB 831	Extend Permits Regarding Land Development.	Senator Clodfelter
SB 882	Statute of Repose/Products Liability.	Senator Hartsell
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11:25 a.m.** on **July 09, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, July 15, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 831	Extend Permits Regarding Land Development	Senator Clodfelter
HB 1151	Res. Lead-Based Paint Hazards/Renovations	Representative Farmer-Butterfield Representative Earle Representative England, M.D. Representative Rapp
HB 1336	Amend Irrigation Contractors' Licensing Laws	Representative Gibson, III
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Senator Foriest
SB 580	N.C. Life Science Development Corp. Act	Senator Hoyle
SB 308	Low Profit Limited Liability Company	Senator Jacumin
SB 882	Statute of Repose/Products Liability	Senator Hartsell
SB 1007	Amend Home Inspector Licensure Laws	Senator Hoyle
SB 117	Clarifying Development Moratoria Authority	Senator Hoyle

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, July 15, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, July 15, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Carney, Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Mills, Owens, Pierce, Rapp, Samuelson, Steen, Tarleton, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 831 - A BILL TO BE ENTITLED AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.
Sponsor: Senator Clodfelter
Representative Carney moved for adoption of the proposed House substitute bill #2. Representative Harrell presented SB 831 on behalf of Senator Clodfelter. He said that SB 831 is a companion to his HB 1490 which passed unanimously on May 14 both out of this Committee and on the Chamber floor. The bill extends certain permits regarding land development. The changes in the PCS were technical only. All stakeholders were in agreement with it, and Representative Harrell knew of no opposition to it. Representative Goforth moved for a favorable report to the proposed House committee substitute bill #2 for SB 831, unfavorable to House committee substitute bill #1. The motion passed.

HB 1336 - A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.
Sponsor: Representative Gibson, III

Representative Tarleton moved for adoption of the proposed committee substitute for HB1336, and it was adopted. Representative Gibson explained the bill. He said HB1336 clearly defined out-of-state contractors; defined what a contractor is; and makes sure the exemption for general contractors is clear. He knew of no opposition. Representative Carney moved for a favorable report for the proposed committee substitute, unfavorable to the original bill with a recommendation for a re-referral to the Committee on Finance. The motion passed.

SB 882 - A BILL TO BE ENTITLED AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.
Sponsor: Senator Hartsell
Representative Dickson advised Committee members that after much discussion, all parties have agreed. As Chair of the Committee, she was very appreciative of all the work that had been done on this bill. Representative Harrell moved for adoption of the proposed House committee substitute, and it was adopted. Senator Hartsell presented SB 882. The gist of the resolution was to extend the statute of repose to 12 years. Nationwide, the states who have a statute of repose that statute ranges from 10 to 20 years. The additional language expressly reflected that it did not deal with any issue involving the "disease exception." That language had been approved by the parties on a word-by-word basis. Discussion followed. Representative Wilkins thanked Senator Hartsell for his leadership since there had been so much controversy in the bill before. Representative Wilkins moved for a favorable report for the proposed House committee substitute for SB 882, unfavorable to the original bill, with a re-referral to the Committee on Judiciary I. The motion passed.

HB 1151 - A BILL TO BE ENTITLED AN ACT TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.
Sponsors: Representatives Farmer-Butterfield, Earle, England, and Rapp
Representative Steen moved for adoption of the proposed committee substitute bill, and it was adopted. Representative Farmer-Butterfield explained the proposed committee substitute for HB 1151. She reminded Committee members that the bill had been before them in a previous meeting. There were many questions. Since that time, there have been various meetings with as many stakeholders as possible (Realtors Association, Homebuilders Association, e-mails from Committee members). Much homework was done to bring forth the proposed committee substitute. Lisa Martin, North Carolina Homebuilders Association, appeared before the Committee and said that they had concerns with the original bill and have now worked out their differences with the bill sponsor. She said the bill is basically in the federal program, and her members said they would rather have it enforced at the state level as long as it is not more stringent than the federal program. Mary Giguere, Department of Health and Human Services appeared before the Committee and answered questions from Committee members. Discussion followed. Representative Samuelson moved for a favorable report for the proposed committee substitute for HB 1151, unfavorable to the original bill with a re-referral to the Committee on Finance. The motion passed.

SB 687 - A BILL TO BE ENTITLED AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS. Sponsor: Senator Foriest

Representative Starnes moved for adoption of the proposed House committee substitute, and it was adopted. Senator Foriest explained the PCS. He said that he had been approached by plumbers in his area who felt that they were being taken advantage of and were disproportionately being pushed out of their business. It appears that for decades, they have been able to do work on wells. Now there is legislation that has been passed in the General Assembly in recent years that would put them in a situation where they would not be able to continue on with what they have been trained to do. All stakeholders are in agreement with the PCS and Representative Foriest asked for the Committee's support. Discussion followed. Colleen Kochanek, representing the North Carolina Groundwater Association, appeared before the Committee and supported the bill. Nick Fountain, Attorney for the Licensing Board, appeared before the Committee and said they are supportive of the language as it appeared today. He said that once the well is sealed and there is no longer a concern that well drillers or others might have as to whether to disinfect it or not, then they would be able to proceed as they have always done. It is slightly more restrictive in supervision than they might have interpreted it otherwise. It will not require people to have to stay at the site overnight. Representative Blackwood moved for a favorable report for the proposed House committee substitute bill, unfavorable to the original bill with a re-referral to the Committee on Judiciary III.

SB 580 - A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND. Sponsor: Senator Hoyle

Senator Hoyle explained SB 580 and gave background information about the science industry in North Carolina. The Biotechnology Center has researched the project carefully and believes this is a good idea. Senator Hoyle referenced 30 years ago when the Biotechnology Center was created, and he gave statistics on what a great return it has been for the state of North Carolina. He felt SB 580 would be good for the state also. Norris Tolson, President, Biotechnology Center, spoke on the bill and endorsed it. Jerry Hancock, Attorney, representing the Biotechnology Center appeared before the Committee and said this was to create investment pools. Discussion followed. Representative Harrell moved for a favorable report for SB 580 with a re-referral to the Committee on Finance. The motion passed.

The meeting adjourned at 1:47 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
R. Paul Wilms	WGR
Elizabeth Tafur	Kocharek Law Group
Henry Hutaff	N.C.B.A.
Amy McConkey	Smith Anderson
Todd Barlow	NC Advocates for Justice
Ken Kyre	NCADA
[illegible]	DPH
[illegible]	DPH
Mary Giguere	DPH
Ruth Merkle	LA, Rep Farmer-Butterfield

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	EGHS
Jessi Hayes	NC HBA
Tim Minton	HBA of Raleigh-Wake County
Dick Gritton	atty.
Kelly Graham	NCAJ
Dick Taylor	NCAJ
Mike Wilkins	NC BC
Paul Pully	AOJ
Rick Zechini	NC Assoc. of Realtors
Patrick Baffi	MMR
Suzanne Harris	HBA-RWC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Waller	Charlotte Chamber
Kim Crouch	NC Bar Assn.
Emily Gantimore	NC Bar Assoc.
Dick Fiocentan	young Moore
Dale Dawson	State Board. P. Hlg + FS
Don Chaney	NC DHHS HMCU
Katrina English	NCCN
S Wilson	DHHS
Greg Bright	Well contractors Certification Commission
Henry Jones	Attorney - Raleigh
Elizabeth Biser	DENR

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alexandra Embory	DENR
Dave Goodrich	"
Robin Smith	"
Christopher Hamard	NCACC
Chris McLamb	Raleigh
Betsy Bailey	PENC
Jim Johnson	BSA
Sarah Sarb	WCSR

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Salamido	GS/L
Preston Bunn	MCIC
Doug Hamm	Wilmer Miller
Nancy Thompson	Weyerhaeuser
David Bradley	intern
Cody Thomas	NCAR
L. Andrews	NCFB
Edgar Miller	CTNC
Michelle Frazier	MFFS
Kristi Huff	NCHCFA
Ben Hitchings	NCAPA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Ferguson	NC- Inter NACHI / Inter NACHI Boulder, CO
David Barry	MWC
John Polanto	NCRMA
Thomas Hardaway	PhRMA
Lew Ebert	NC Chamber
John McAlister	NC Chamber
Joan Goodman	"
Mary Bell	AARP-NC
Marty Babcock	Embarq
Daniel Baum	K+L Gates
Daniel Ambum	Electric Cities of N.C

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 15, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	Key Kusk
J LAMBL	SEN WICKER
[illegible]	NCDOC
Wendy Kelly	S20 Wicker
Melanie Lowe	DCR
Rita Harris	DOC
Paul Stock	NCBA
Dana Sipe	Smith Madison

VISITOR REGISTRATION SHEET

House Comm Sm. Bus & Entrp — 7-15-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	G.S.K.
	GSK
	KHF
Nick Tennyson	HBA of Durham
Kevin Raymond	NCACC
Kelli Kuhn	NCLM
Paul Meyer	NCLM
Chris Hayes	Cisco
Bob Lorean	NCFA
Sherri Reid	IOG
	NCIC

VISITOR REGISTRATION SHEET

House Comm. Sm. Bus & Entre — 7-15-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jamy Bentley	GIC
John Bowdich	AstraZeneca
Barbara Canales	BSCA
Gregg Thompson	NFIB
[illegible]	NMRS
[illegible]	MFOS
[illegible]	MLVC

VISITOR REGISTRATION SHEET

Comm, Sm Bus. & Emt. — 7/15/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	EMBARQ
Andrew S. Chan	R Chan & Assoc.
[illegible]	Edwards Wildman
Chris Bell	CAPA
Gillian Kocharek	KLG

Rm. 1228
LT03

HOUSE PAGES

COMMERCE, SMALL BUSINESS AND
NAME OF COMMITTEE ENTREPRENEURSHIP DATE 7-15-09

1. Name: Madison Inman
   County: Stanly
   Sponsor: Burr
2. Name: Troy Miller
   County: Durham
   Sponsor: Hall
3. Name: Katheryn Woolard
   County: Wake
   Sponsor: Spears
4. Name: Anna Pivler
   County: Union
   Sponsor: Blackwood.

#6

5. Name: Ellen Laws	Harry Riegel
County: Wilkesboro	Wake
Sponsor: Randleman	Hackney

SGT-AT-ARM

1. Name: EARL COKER
2. Name: Dusty Rhodes
3. Name: Young BAE
4. Name: David Shearon
5. NAME: FRANK PREVO

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ House Committee Substitute # 1 for

SB 831 A BILL TO BE ENTITLED AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

☒ With a favorable report as to House committee substitute bill 2, which changes the title, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 831

Commerce Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 5/25/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S831-PCS55479-SB-54

Short Title: Extend Certain Development Approvals. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN GOVERNMENT APPROVALS AFFECTING THE DEVELOPMENT OF REAL PROPERTY WITHIN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension Act of 2009."

SECTION 2. The General Assembly makes the following findings:

(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

(5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and

expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

SECTION 3. Definitions. – As used in this act, the following definitions apply:

(1) Development approval. – Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

a. Any detailed statement by a State agency under G.S. 113A-4.

b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.

c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.

d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.

e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.

g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.

h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.

i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.

j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.

k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.

l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes.

m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.

n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.

(2) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

SECTION 4. For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1

or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

SECTION 5. This act shall not be construed or implemented to:

(1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.

(2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.

(3) Shorten the duration that any development approval would have had in the absence of this act.

(4) Prohibit the granting of such additional extensions as are provided by law.

(5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.

(6) Affect the ability of a government entity to revoke or modify a development approval pursuant to law.

(7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

SECTION 6. If development approvals that have been tolled pursuant to this act are contingent upon connection to a water supply system or a sanitary sewer system and there is not sufficient supply or treatment capacity to accommodate requests for additional allocation, each holder of a development approval for a project that is dependent upon connection to a water supply system or a sanitary sewer system must submit a construction schedule for approval and begin construction within 30 days of notification that new supply or treatment capacity allocation has been requested by other parties who are ready to proceed with construction or the reserved capacity shall revert for reallocation.

SECTION 7. Within 30 days after the effective date of this act, each agency or subdivision of the State to which this act applies shall place a notice in the North Carolina Register listing the types of development approvals that the agency or subdivision issues and noting the extension provided in this act. This section does not apply to units of local government.

SECTION 8. The provisions of this act shall be liberally construed to effectuate the purposes of this act.

SECTION 9. This act is effective when it becomes law.

SENATE BILL 831:
Extend Permits Regarding Land Development

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	July 8, 2009
Introduced by:	Senator Clodfelter	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute S831-CSSB-54[v.14] for the Third Edition		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 831 (PCS) would extend the duration of certain permits and approvals affecting the development of real property in the State.***

[As introduced, this bill was identical to H1490, as introduced by Reps. Harrell, Goforth, Dollar, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship.]

BILL ANALYSIS: The PCS for Senate Bill 831 would provide that for any of the following development approvals that are current and valid at any point from January 1, 2008, through December 31, 2010, the running of the period of the development approvals is suspended during that period:

- Environmental impact statements and findings of no significant impact required pursuant to the State Environmental Policy Act.
- Erosion and sedimentation control plan approvals granted by the North Carolina Sedimentation Control Commission or local government.
- Coastal Area Management Act (CAMA) major permits, minor permits, and any other permit issued under CAMA.
- Water and wastewater permits issued by the Department of Environment and Natural Resources (DENR) or local health departments.
- Building permits issued under the State Building Code.
- Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.
- Stream origination certifications and water quality certifications issued by DENR.
- Air quality permits issued by the Environmental Management Commission (EMC).
- Approval of sketch plans, preliminary plats, plats regarding subdivision of land, site specific development plans or phased development plans, development agreements, or building permits issued by cities or counties.
- Certificates of appropriateness issued by a preservation commission of a city.

The PCS also provides that the suspension of the running of the period of the development approvals could not be implemented to do any of the following:

- Extend any permit or approval issued by the United States.
- Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.

- Shorten the duration that any development approval would have had in the absence of this act.
- Prohibit the granting of such additional extensions as are provided by law.
- Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.
- Affect the ability of a government entity to revoke or modify a development approval pursuant to law.
- Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

The PCS further provides that if development approvals that have been tolled pursuant to this act are contingent upon connection to a water supply system or a sanitary sewer system and there is not sufficient supply or treatment capacity to accommodate requests for additional allocation, each holder of a development approval for a project that is dependent upon connection to a water supply system or a sanitary sewer system must submit a construction schedule for approval and begin construction within 30 days of notification that new supply or treatment capacity allocation has been requested by other parties who are ready to proceed with construction or the reserved capacity shall revert for reallocation.

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

Jennifer Mundt, staff to the House Committee on Water Resources and Infrastructure, substantially contributed to this summary.

S831-SMSB-77(e3) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 831

Commerce Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 5/25/09

Short Title: Extend Permits Regarding Land Development. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND CERTAIN PERMITS AND APPROVALS AFFECTING THE PHYSICAL DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE STATE OF NORTH CAROLINA, THEREBY SUPERSEDING ALL STATUTORY AND REGULATORY REQUIREMENTS TO THE CONTRARY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension Act of 2009."

SECTION 2. The General Assembly makes the following findings:

(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including homebuilders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

(5) The process of obtaining the myriad other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) Obtaining extensions of approvals granted by State government is frequently impossible, always difficult, and always expensive, and no policy reason is served by the expiration of these permits, which were approved only after thorough review of the application.

(15) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

SECTION 3. Definitions. – As used in this act, the following definitions apply:

(1) Approval. – Except as otherwise provided in Section 4 of this act, any detailed statement by a State agency under G.S. 113A-4; any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8; any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes; any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes; any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes; any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes; any building permit issued under Article 9 of Chapter 143 of the General Statutes; any discharge, nondischarge, or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes; any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes; any water quality certification under Article 21 of Chapter 143 of the General Statutes; any air quality permit issued by the Environmental Management Commission under Article 21B of the General Statutes; any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes; any approval by a city of sketch plans, preliminary plats, or plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes; any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes; when the approval under this subdivision pertains to the development of land or to the provision of water or wastewater services by a government entity and whether the approval under this subdivision is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement, or any other executive or administrative decision that allows the development or provision of services to proceed.

(2) Area of environmental concern. – An area designated under G.S. 113A-113 by the Coastal Resources Commission.

(3) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

(4) Extension period. – The period beginning January 1, 2007, and continuing through December 31, 2010.

(5) Government. – Any municipal, county, regional, or State government, or any agency, department, commission, or other instrumentality thereof.

SECTION 4.(a) For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension

period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period. Nothing in this act shall shorten the duration that any approval would have had in the absence of this act, nor shall this act prohibit the granting of such additional extensions as are provided by law when the tolling granted by this act expires.

SECTION 4.(b) Nothing in this act shall be deemed to extend or purport to extend:

(1) Any permit or approval under Section 3 of this act when the permit or approval is for a development project that has been substantially altered since the permit or approval was granted, as determined by the government entity that granted the permit or approval.

(2) Any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or to any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

(3) Any Department of Transportation permit other than a right-of-way permit.

SECTION 4.(c) This act shall not affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued during the extension period.

SECTION 4.(d) Nothing in this act shall affect the ability of the Secretary of Environment and Natural Resources to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Department of Environment and Natural Resources. Nothing in this act shall affect the ability of the Environmental Management Commission to revoke or modify a specific permit or approval, or extension thereof pursuant to this act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the Environmental Management Commission.

SECTION 4.(e) In the event that any approval tolled pursuant to this act is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the effective date of this act. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to this act shall be allocated in order of the granting of the original approval of the connection.

SECTION 4.(f) Nothing in this act shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

SECTION 5. Each State agency shall, within 30 days after the effective date of this act, place a notice in the North Carolina Register tolling all approvals in conformance with this act.

SECTION 6. The provisions of this act shall be liberally construed to effectuate the purposes of this act.

SECTION 7. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1336 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1336
PROPOSED COMMITTEE SUBSTITUTE H1336-PCS80490-ROf-75

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.

(2) Any property owner who performs irrigation construction or contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A licensed general contractor ~~licensed under Article 1 of Chapter 87 of the General Statutes.~~ who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor. A

public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or contracting work for a golf course.

(16) Any person maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 2. G.S. 89G-5(11) reads as rewritten:

"The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 3. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation pays the license fee required by G.S. 89G-10 and complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of a corporation and exercise direct supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more managers or executives, as defined in G.S. 57C-1-03, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the limited liability company and exercise direct supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the partnership and exercise direct supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business pays the fee required by G.S. 89G-10 and complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for irrigation construction in the assumed or designated trade name of the business and exercise direct supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall exercise direct supervision over a contract for irrigation construction until the contract is completed.

(g) When an individual licensee, other than a sole proprietor, executes a contract for irrigation construction on behalf of another person, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, limited liability company, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, limited liability company, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1), the license issued under this section is automatically suspended, and the corporation, partnership, or person shall cease practicing irrigation construction or contracting.

"**§ 89G-6.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity

licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that: (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 4. G.S. 89G-9(b) reads as rewritten:

"(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each licensee shall complete 10 continuing education units per year. Failure to obtain continuing education units shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 5. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	~~Application fee~~Individual application and initial license	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license renewal	100.00
(3a)	Initial corporate, limited liability company, partnership, or trade-name license	100.00
(3b)	Corporate, limited liability company, partnership, or trade-name renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
~~(6)~~	~~Corporate license~~	~~100.00~~
(7)	Duplicate license	25.00."

SECTION 6. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 7. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1336
PROPOSED COMMITTEE SUBSTITUTE H1336-CSROf-75 [v.1]

7/15/2009 10:01:00 AM

Short Title: Amend Irrigation Contractors' Licensing Laws. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.

(2) Any property owner who performs irrigation construction or contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A licensed general contractor ~~licensed under Article 1 of Chapter 87 of the General Statutes.~~ who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor. A

public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or contracting work for a golf course.

(16) Any person maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 2. G.S. 89G-5(11) reads as rewritten:

"The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 3. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation pays the license fee required by G.S. 89G-10 and complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation, are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of a corporation and exercise direct supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more managers or executives, as defined in G.S. 57C-1-03, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the limited liability company and exercise direct supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the partnership and exercise direct supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business pays the fee required by G.S. 89G-10 and complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for irrigation construction in the assumed or designated trade name of the business and exercise direct supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall exercise direct supervision over a contract for irrigation construction until the contract is completed.

(g) When an individual licensee, other than a sole proprietor, executes a contract for irrigation construction on behalf of another person, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, limited liability company, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, limited liability company, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivisions (a)(1), (b)(1), or (c)(1), the license issued under this section is automatically suspended, and the corporation, partnership, or person shall cease practicing irrigation construction or contracting.

"**§ 89G-6.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity

licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that: (i) the debt has been paid, or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 4. G.S. 89G-9(b) reads as rewritten:

"(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each licensee shall complete 10 continuing education units per year. Failure to obtain continuing education units shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 5. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	~~Application fee~~Individual application and initial license	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license renewal	100.00
(3a)	Initial corporate, limited liability company, partnership, or trade-name license	100.00
(3b)	Corporate, limited liability company, partnership, or trade-name renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
~~(6)~~	~~Corporate license~~	~~100.00~~
(7)	Duplicate license	25.00."

SECTION 6. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 7. This act This act becomes effective October 1, 2009.

HOUSE BILL 1336

Short Title:	Amend Irrigation Contractors' Licensing Laws.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions in this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.

(2) Any property owner who performs irrigation construction or contracting work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A ~~general~~ building contractor, residential contractor, or public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or contracting work for a golf course.

(16) Any person maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103."

SECTION 2. G.S. 89G-5(11) reads as rewritten:

"The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 3. Chapter 89G of the General Statutes is amended by adding the following new sections to read:

"**§ 89G-6.1. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation pays the license fee required by G.S. 89G-10 and complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation, are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of a corporation and exercise direct supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more managers or executives, as defined in G.S. 57C-1-03, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the limited liability company and exercise direct supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership pays the fee required by G.S. 89G-10 and complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for irrigation construction in the name of the partnership and exercise direct supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business pays the fee required by G.S. 89G-10 and complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for irrigation construction in the assumed or designated trade name

of the business and exercise direct supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall exercise direct supervision over a contract for irrigation construction until the contract is completed.

(g) When a licensee executes a contract for irrigation construction in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivisions (a)(1), (b)(1), or (c)(1), the license issued under this section is automatically suspended, and the corporation, partnership, or person shall cease practicing irrigation construction or contracting.

"**§ 89G-6.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the

Secretary of Revenue unless the Board receives a written statement from the Secretary that: (i) the debt has been paid, or (ii) the debt is being paid pursuant to an installment agreement."

SECTION 4. G.S. 89G-9(b) reads as rewritten:

"(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each licensee shall complete 10 continuing education units per year. Failure to obtain continuing education units shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 5. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	~~Application fee~~Individual application and initial license	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license renewal	100.00
(3a)	Initial corporate, limited liability company, partnership, or trade-name license	100.00
(3b)	Corporate, limited liability company, partnership, or trade-name renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
~~(6)~~	~~Corporate license~~	~~100.00~~
(7)	Duplicate license	25.00."

SECTION 6. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice irrigation construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including attorneys' fees, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter."

SECTION 7. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 882 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 882
Judiciary I Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S882-PCS75292-RN-44

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"**§ 1-50. Six years.**

(a) Within six years an action –

...

~~(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. Article 5 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-46.1. Twelve years.**

(a) Within 12 years an action –

(1) No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 12 years after the date of initial purchase for use or consumption."

SECTION 3. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not affect the application of G.S. 1-50(a)(5). Nothing in this act is intended to change existing law relating to product liability actions based upon disease.

SENATE BILL 882:
Statute of Repose/Products Liability

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	**Date:**	July 15, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Brad Krehely
Analysis of:	PCS to Third Edition S882-CSRN-44		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 882 would change North Carolina's statute of repose for products liability from 6 years to 12 years. The effect is that a plaintiff could not recover if the action is brought more than 12 years after the date of initial purchase for use or consumption.***

[As introduced, this bill was identical to H851, as introduced by Rep. Faison, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.]

CURRENT LAW: G.S. 1-50(a)(6) is North Carolina's current statute of repose for products liability. It prohibits actions for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than 6 years after the date of initial purchase for use or consumption.

BILL ANALYSIS:

Section 1 deletes North Carolina's current statute of repose for products liability (no recovery if the action is brought more than 6 years after the date of initial purchase for use or consumption).

Section 2 creates a new 12 year statute of repose for products liability (no recovery if the action is brought more than 12 years after the date of initial purchase for use or consumption).

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not affect the application of G.S.1-50(a)(5). Nothing in this act is intended to change existing law relating to product liability actions based upon disease.

BACKGROUND: North Carolina's appellate courts have consistently held that the State's products liability statute of repose does not apply to diseases. *See Wilder v. Amatex Corp.*, 314 N.C. 550, 336 S.E.2d 66 (1985)(holding that the statute of repose did not bar plaintiff's claim because occupational diseases, such as asbestosis, do not manifest themselves until many years after exposure to the product and no injury occurs until the date the disease is diagnosed); *see also Hyer v. Pittsburgh Corning Corp.*, 790 F.2d 30 (1986)(confirming that North Carolina's statute of repose does not apply to disease-based claims).

S882-SMRN-108(CSRN-44) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 882
Judiciary I Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/12/09

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"**§ 1-50. Six years.**

(a) Within six years an action –

...

~~(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. G.S. 99B-2 reads as rewritten:

"**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

...

(b) A claimant who is a buyer, or a lessee as defined in ~~the Uniform Commercial Code,~~ G.S. 25-2A-103(1)(n), of the product involved, or who is a member or a guest of a member of the family of the ~~buyer,~~buyer or lessee, a guest of the ~~buyer,~~buyer or lessee, or an employee of the ~~buyer~~ buyer or lessee may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action."

SECTION 3. Chapter 99B of the General Statutes is amended by adding a new section to read:

"**§ 99B-7. Limitation of actions; statute of repose.**

(a) The purpose of this section is to define in a single statute the time limits for commencing product liability actions and to protect the citizens, manufacturers, and sellers of North Carolina.

(b) All product liability actions, except those for wrongful death, shall be commenced within three years of the date on which the property damage or injury complained of occurs.

(c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be commenced within two years of the date of death, so long as the decedent's claim would not have been barred on the date of death by the provisions of subsections (d) and (e) of this section.

(d) Except as provided in subsection (f) of this section, all product liability actions against manufacturers shall be commenced as follows:

(1) For products manufactured in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products manufactured outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(e) Except as provided in subsection (f) of this section, all product liability actions against sellers shall be commenced as follows:

(1) For products sold or leased by the defendant seller in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products sold or leased by the defendant seller outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the seller sold or leased the product, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the seller sold or leased the product does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(f) The statutes of limitation and repose for product liability actions shall be subject to the tolling provisions of G.S. 1-17 and G.S. 1-22."

SECTION 4. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not effect the application of G.S. 1-50(5), and is not intended to abrogate *Wilder v. Amatex Corp.*, 314 N.C. 550 (1985) or *Hyer v. Pittsburg Corning Corp.* 790 F.2d 30 (1986).

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1151 A BILL TO BE ENTITLED AN ACT TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

☒ With a favorable report as to the committee substitute bill which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1151
PROPOSED COMMITTEE SUBSTITUTE H1151-PCS50769-ROf-65

Short Title: Res. Lead-Based Paint Hazards/Renovations. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Certification and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities, if the person contracting for the renovation activity requests dust clearance sampling.

(2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation activities covered by this Article.

(3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department or the United States Environmental Protection Agency, and (iv) is certified with the Department to perform renovation activities.

(4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age 6.

(5) Renovation activities. – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling technician. Renovation activities include all activities included in the definition of the term 'renovation' in 40 C.F.R. § 745.83.

(6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling. For purposes of this Article, a zero-bedroom dwelling is any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(7) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work in target housing or child-occupied facilities from a certified renovator and (ii) is employed by a certified renovation firm.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of the Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovation firms are required to distribute EPA-approved pamphlets.

"**§ 130A-453.14. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities for compensation in targeted housing or child-occupied facilities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(2) Perform as a trained renovation worker for compensation in targeted housing or child-occupied facilities unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.

(3) Conduct dust clearance sampling for compensation in targeted housing or child-occupied facilities unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector. For purposes of this Article, the terms 'risk assessor' and 'lead-based paint inspector' shall have the same meaning as provided in Article 19A of this Chapter.

(4) Conduct cleaning verification for compensation in targeted housing or child-occupied facilities unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of fees pursuant to G.S. 130A-453.17.

"**§ 130A-453.15. Renewals of certification.**

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator shall renew his or her certification every five years by meeting the standards for renewal established by the Commission.

"**§ 130A-453.16. Accreditation of training courses and training providers.**

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

(d) Training providers and training courses accredited by the EPA are granted reciprocity, but providers and courses must be registered with the Department and comply with this Article.

"**§ 130A-453.17. Certification and accreditation fee schedule.**

(a) The Department shall collect annual accreditation and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00

(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling technician	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers.

"**§ 130A-453.18. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.**

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals.

"**§ 130A-453.19. Record retention, information distribution, and reporting requirements.**

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates ~~Article 19A~~ Article 19A or 19B of this Chapter or any rules adopted pursuant to ~~Article 19A~~ Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation ~~continues.~~ continues for Article 19A of this Chapter. The penalty shall not exceed seven hundred fifty dollars ($750.00) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under ~~this Article.~~ Article 19A or 19B."

SECTION 2. This act becomes effective January 1, 2010.

HOUSE BILL 1151:
Res. Lead-Based Paint Hazards/Renovations

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 15, 2009
Introduced by:	Reps. Farmer-Butterfield, Earle, England, Rapp	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition H1151-CSROf-65		

SUMMARY: ***House Bill 1151 establishes a program in the Department of Health and Human Services for the certification of persons and firms performing lead-based paint renovation work in certain residential housing and child-occupied facilities. The program is regulated by the Commission for Public Health. The bill also requires the accreditation of renovation trainers and training courses and establishes fees.***

The PCS does the following:

- ***Makes clarifications to several of the definitions, including the term "target housing".***
- ***Clarifies that the act only applies to individuals and firms that perform renovation activities for compensation in target housing or child-occupied facilities.***
- ***Authorizes reciprocity for training courses accredited by the EPA.***
- ***Eliminates the fee for certification of individual renovators.***
- ***Reduces the penalty for violation of this Article to $750 per day.***

[As introduced, this bill was identical to S806, as introduced by Sen. Purcell, which is currently in Senate Commerce.]

BILL ANALYSIS:

House Bill 1151 authorizes the Commission for Public Health to establish a state program to regulate persons and firms that perform lead-based paint renovation work, in accordance with federal EPA requirements. Federal law requires that beginning April 2010, a contractor that renovates at least six square feet of interior painted surface or more than 20 square feet of exterior painted surface in certain housing and child care facilities must be certified and follow certain work practices to prevent lead contamination.

Section 1 creates a new Article 19B in the Public Health Law, entitled "'Certification and Accreditation of Lead-Based Paint Renovation Activities." The new Article requires that renovations performed for compensation in certain residential housing and in child-occupied facilities must be performed by certified renovators or certified renovation firms.

The bill prohibits non-certified renovators or firms from performing renovation activities, conducting dust clearing sampling, or conducting cleaning verification. The Commission is directed to adopt rules governing the qualifications, training, and experience required for certification. Certified renovators, firms, and dust sampling technicians must renew their certification annually.

Training providers and training courses must be accredited annually in accordance with rules adopted by the Commission.

The bill establishes maximum fees for accreditation and certification which are to be used for the administration of the Article. The fees do not revert to the General Fund at the end of the fiscal year. Accreditation fees do not apply to local or State governmental agency personnel, Indian tribes, or nonprofit training providers.

The Commission is directed to adopt rules to implement the provisions of the Article.

Section 2 amends the law governing penalties for violation of the Chapter. The amendment provides that an administrative penalty may be imposed for violation of the new Article or any rules adopted pursuant to it. The penalty for violation of this Article shall not exceed $750 for each day the violation continues.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

H1151-SMRO-148(CSROf-65) v1

HOUSE BILL 1151

Short Title:	Res. Lead-Based Paint Hazards/Renovations.	(Public)
Sponsors:	Representatives Farmer-Butterfield, Earle, England, Rapp (Primary Sponsors); Bordsen, Brisson, Fisher, Glazier, Harrison, Hughes, Insko, Jones, Lucas, and Neumann.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH REQUIREMENTS FOR REGISTRATION AND CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Registration, Certification, and Accreditation of Lead-Based Paint Renovation Activities.

"**§ 130A-453.12. Definitions.**

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

(1) Registered renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department, and (iv) is registered with the Department to perform renovation activities.

(2) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities.

(3) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation work covered by this Article.

(4) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in

renovation work from a registered renovator and (ii) is employed by a certified renovation firm.

(5) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age six.

(6) Visual inspection for cleaning verification. – The visual examination of the renovated area of target housing or a child-occupied facility following renovation activities to determine if visible dust, debris, and other residue remain in the work area.

"**§ 130A-453.13. Purpose.**

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by registered renovators and certified individuals and firms; establishes procedures and requirements for registration and certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires distribution of EPA-approved pamphlets and the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Lead-based paint is presumed to be present in housing and child-occupied facilities covered by this Article. Risk assessments and inspections to determine the presence of lead-based paint or lead-based paint hazards are not required under this Article or the rules adopted by the Commission pursuant to this Article.

"**§ 130A-453.14. Registration of renovators and certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.**

(a) No firm shall perform, offer, or claim to perform renovation activities unless the firm is a certified renovation firm.

(b) No individual shall:

(1) Perform, offer, or claim to perform renovation activities unless the individual is a registered renovator.

(2) Perform as a trained renovation worker unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a registered renovator.

(3) Conduct dust clearance sampling unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector.

(4) Conduct cleaning verification unless the individual is a registered renovator.

(c) The Commission shall adopt rules governing the registration of renovators and the certification of other individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of any applicable fees.

"§ 130A-453.15. Renewals of certification and registration.

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A registered renovator may renew his or her registration by taking refresher courses offered by a training provider accredited by the Department and by meeting any additional standards for renewal established by the Commission.

"§ 130A-453.16. Accreditation of training courses and training providers.

(a) No training provider shall provide, offer, or claim to provide:

(1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.

(2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.

(b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.

(c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.

"§ 130A-453.17. Registration, certification, and accreditation fee schedule.

(a) The Department shall collect annual accreditation, registration, and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

		Maximum Fee
(1)	Accreditation of a training provider	$150.00
(2)	Reaccreditation of a training provider	$150.00
(3)	Accreditation or reaccreditation of initial courses (Per course per language)	$2,000
(4)	Accreditation or reaccreditation of refresher courses (Per course per language)	$2,000
(5)	Certification or recertification of a firm	$300.00
(6)	Certification or recertification of a dust sampling Technician	$150.00
(7)	Registration or reregistration of a renovator	$150.00

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers. The certification fees imposed under this section do not apply to local or State governmental regulatory agency personnel.

"§ 130A-453.18. Work practices and responsibilities of renovation firms, registered renovators, and dust sampling technicians.

The Commission shall establish standards for work practices and define the responsibilities of registered renovators and certified renovation firms and individuals.

"§ 130A-453.19. Record retention, information distribution, and reporting requirements.

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, registered renovators, and certified renovation firms and individuals.

"**§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.**

The Commission shall adopt rules exempting certain renovation activities from this Article.

"**§ 130A-453.21. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

SECTION 2. This act becomes effective January 1, 2010.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 687 A BILL TO BE ENTITLED AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 687
PROPOSED HOUSE COMMITTEE SUBSTITUTE S687-PCS75293-LU-7

Short Title: Exempt Plumb'g Contractor/Well Contractr Reqs. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

(13) A person who is licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who installs pumps or pumping equipment; installs, breaks, or reinstalls a well seal in accordance with G.S. 87-85(6); or disinfects a well incident to the installation, alteration, or replacement of pumps or pumping equipment within or near a well. However, the plumbing contractor shall maintain documentation of having attended a continuing education course that covered well seal installation, protection, and sanitation within the last two years prior to the work being performed. The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors shall ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule. The licensed plumbing contractor shall remain on-site while the work is being performed until the well is disinfected and sealed."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 687
PROPOSED HOUSE COMMITTEE SUBSTITUTE S687-CSLU-7 [v.7]

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Short Title: Exempt Plumb'g Contractor/Well Contractr Reqs. (Public).

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

(13) A person who is licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who installs pumps or pumping equipment; installs, breaks, or reinstalls a well seal in accordance with G.S. 87-85(6); or disinfects a well incident to the installation, alteration, or replacement of pumps or pumping equipment within or near a well. However, the plumbing contractor shall maintain documentation of having attended a continuing education course that covered well seal installation, protection, and sanitation within the last two years prior to the work being performed. The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors shall ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule. The licensed plumbing contractor shall remain on site while the work is being performed until the well is disinfected and sealed."

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

SENATE BILL 687: Exempt Plumb'g Contractor/Well Contractr Reqs

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	July 15, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	PCS to First Edition S687-CSLU-7		

SUMMARY: ***Senate Bill 687 would exempt plumbing contractors from well contractor certification requirements when performing certain well contractor activities.***

The Proposed Committee Substitute would add the disinfection of a well to the exempt activities and the requirement that the licensed plumbing contractor must have attended a continuing education course on those well contractor activities. It would require the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors provide the appropriate education courses. The licensed plumbing contractor must also remain on site while the work is being performed until the well is disinfected and sealed.

CURRENT LAW: Under current law, no person may perform, manage, or supervise any well contractor activity without meeting the qualification requirements and obtaining certification from the Well Contractors Certification Commission.

BILL ANALYSIS: The PCS for Senate Bill 687 would exempt a licensed plumbing contractor who installs pumps or pumping equipment; installs, breaks, or reinstalls a well seal; or disinfects a well incident to the installation, alteration or replacement of pumps or pumping equipment within or near a well, from the well contractor certification requirements. However, the plumbing contractor must have documentation that he or she attended a continuing education course that covered well seal installation, protection, and sanitation within the 2 years prior to the work being performed and must remain on site while the plumbing work is performed until the well is disinfected and sealed.

The State Board of Plumbing, Heating and Fire Sprinkler Contractors must ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule.

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

S687-SMRQ-119(CSLU-7) v3

**Karen Cochrane-Brown and Wendy Graf Ray, Counsel to the Senate Commerce Committee, substantially contributed to this summary.*

SENATE BILL 687

Short Title:	Exempt Plumb'g Contractor/Well Contractr Reqs.	(Public)
Sponsors:	Senators Foriest, Hartsell; Atwater, Bingham, Forrester, and Rouzer.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

(13) A person who is licensed as a plumbing contractor under Article 2 of this Chapter who installs, breaks, or reinstalls a well seal or sanitizes a well incident to the installation, alteration, or replacement of pumps and associated piping within or near a well."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 580 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 580:
N.C. Life Science Development Corp. Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 15, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 580 creates the NC Life Science Development Corporation Act.

BILL ANALYSIS:

Section 1

North Carolina Life Science Development Corporation and North Carolina Life Science Development Fund

The bill establishes the Life Science Development Act (Act) to help life science companies finance new and expanded facilities and equipment for the production and delivery of life science products and services by creating a mechanism to provide financing to life science businesses. The bill states that the North Carolina Life Science Development Corporation (Corporation) is a 501(c)(3) entity organized to administer the Act. The incorporator would be the president of the North Carolina Biotechnology Center who is also required to form the Corporation by filing articles of incorporation with the Secretary of State. The Board of Directors (Board) for the Corporation must consist of 9 members and must include the president of the North Carolina Biotechnology Center and the North Carolina Secretary of Commerce who shall serve as chair and vice-chair respectively. The incorporator names the initial Board for terms set in the bylaws.

The purpose of the Corporation is to form and manage a for-profit limited liability company known as the North Carolina Life Science Development Fund, LLC (Fund) with the Corporation as the sole managing member of the limited liability company. The Fund may make loans to life science companies for the following purposes:

- The acquisition or expansion of capital facilities in the State and to acquire capital equipment to be located in the State.
- Regulatory, documentation, and other costs required to make the facilities or equipment to be located in the State operational.

The Fund must accept non-managing member investments from designated investors that pay a designated rate of return and a scheduled redemption in accordance with rules adopted by the Corporation. The bill provides that investments by designated investors in the Fund are permissible investments under the State laws for State-chartered banks, State-chartered savings and loans associations, State-chartered credit unions, State-charted industrial loan corporations, domestic insurance companies or any combination of these entities. The Corporation is authorized to collect a management fee from the Fund.

The bill provides that the Corporation is prohibited from pledging the credit or taxing power of the State or any political subdivision of the State or making its debts payable out of any moneys or resources except those of the Corporation.

Loans Made by the Fund

The Board must determine when and to what extent the Fund should loan funds to qualified life science companies engaged in manufacturing based on factors that include the borrower's written business plan; the borrower's written manufacturing plan; the borrower's history of attracting operating capital; the borrower's management team; the borrower's job creation potential and other enumerated factors.

The maximum cumulative loan that may be made to any borrower may not exceed $30,000,000.

Equity Certificates and Tax Credit Certificates

Each designated investor would receive an equity certificate from the Fund which is binding on the Fund and the Corporation and cannot be modified, terminated, or rescinded. The equity certificate must reflect the following:

- The investor is a non-managing member of the Fund.
- The amount of the investment.
- The dates and amounts of each guaranteed return on the investment.
- The date upon which the investment will be returned to the investor.
- That the Corporation will issue a tax credit certificate when required by the Act.

If the Corporation determines that there will be a shortfall for any payment to a designated investor required by an equity certificate, then the corporation must issue the designated investor a tax credit certificate which includes: (i) the amount of the initial equity investment; (ii) the rate of return on the invested capital; (iii) the calculation formula for determining the scheduled aggregate return on the initial equity investment; (iv) the due date of the payment; and (v) the amount of the shortfall for which a tax credit may be claimed. The tax credits are described in Section 2 of the bill.

Annual Audit and Report

The Corporation must conduct an audit of the Fund each calendar year and publish an annual report of activities conducted by the Fund.

Dissolution

The Corporation would be liquidated and dissolved upon dissolution of the Fund and any assets owned by the Fund or the Corporation must be distributed to the State.

Section 2

Life Science Development Tax Credits

A taxpayer that receives a tax credit certificate from the Corporation would be allowed a tax credit equal to 100% of the amount specified in the certificate. The credit would be allowed against the franchise taxes, the premium taxes and the income taxes levied by the State. If the tax credit allowed exceeds the amount of the tax imposed reduced by the sum of all credits allowed, the Secretary of Revenue must refund the excess to the taxpayer.

A pass-through entity that qualifies for the tax credit does not distribute the credit among any of its owners and the pass-through entity is considered the taxpayer for the purposes of claiming the tax credit.

Cap on Tax Credit Certificates

The total unpaid amount of the issued equity certificates and the remaining obligations of the Fund to designated investors (as reflected by the equity certificates) may not ever exceed $100,000,000. The

chair and vice-chair of the Board can require by unanimous vote for the Fund to repay the State with any or all tax credits issued.

As long as a tax credit certificate has been issued and has not been repaid, the Board must determine (on or before each 5th anniversary of the first issuance of the tax credit certificates and more frequently if the Board wishes) whether and to what extent the Fund has the ability to repay the State for the tax credits considering the Fund's obligations, ongoing operations, and need for further lending.

Report

The Department of Revenue must report by May 1 of each year the following information:

- The number of taxpayers that claimed the tax credit.
- The amount of each credit claimed and the taxes against which it was applied.
- The total cost to the General Fund of the tax credits claimed.

EFFECTIVE DATE: Section 2 of the bill becomes effective for taxable years beginning on or after January 1, 2010. The remainder of the bill becomes effective when it becomes law.

BACKGROUND: Article VIII of the North Carolina Constitution prohibits the General Assembly from creating corporations by special act except for corporations for charitable, educational, penal or reformatory purposes that remain under the patronage and control of the State. Although it is possible to interpret this bill as creating a corporation by special act, the language of the bill does require the incorporator to form the Corporation by filing articles of incorporation with the Secretary of State as is required for other private corporations.

S580-SMRQ-120(e2) v3

SENATE BILL 580
Finance Committee Substitute Adopted 7/2/09

Short Title: N.C. Life Science Development Corp. Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53A of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Life Science Development Act.

"**§ 53A -100. Purpose and definitions.**

(a) Purpose. – The General Assembly finds that life science companies generate employment opportunities for the State, expand local tax bases, and engage in the discovery, development, and commercialization of new pharmaceuticals, biologic products, medical devices, and diagnostic products. The General Assembly finds that there exists in the State a serious shortage of credit for life science companies to finance new and expanded facilities and acquire equipment for the production and delivery of life science products and services. The purpose of this Article is to create a mechanism to provide financing to businesses in need of facilities or equipment for the production or delivery of products and services in the life sciences that will build permanent production facilities in North Carolina.

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

(1) Board. – The board of directors of the corporation.

(2) Corporation. – The North Carolina Life Science Development Corporation.

(3) Designated investor. – A person who purchases an equity interest in a qualified entity and who is issued an equity certificate pursuant to G.S. 53A-105.

(4) Equity certificate. – A contract between the Fund and a designated investor setting forth the amount of investment, the return on the investment, and the repayment terms of the investment.

(5) Fund. – The North Carolina Life Science Loan Fund, LLC.

(6) Incorporator. – The president of the North Carolina Biotechnology Center, a North Carolina nonprofit corporation established and funded by the State of North Carolina.

(7) Life science company. – A company engaged in any of the following:

a. Biotechnology, including agricultural and industrial uses.

b. Pharmaceuticals.

c. Biologic products.

d. Human health care and medical devices.

e. Diagnostic devices.

f. Service laboratories or facilities providing support services to the foregoing companies.

(8) Person. – An individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.

(9) Tax credit certificate. – A certificate issued by the Secretary of Revenue to a designated investor under which a tax credit is issued to the designated investor pursuant to G.S. 105-129.115.

"**§ 53A-101. North Carolina Life Science Development Corporation.**

(a) Creation. – The North Carolina Life Science Development Corporation is a 501(c)(3) entity organized to administer this Article. The incorporator must form the corporation by filing articles of incorporation for the corporation with the Secretary of State. The corporation must adopt bylaws and operational policies that are consistent with this Article.

(b) Purposes. – The purposes of the corporation to be specified in the articles of incorporation must include the following:

(1) To organize the Fund.

(2) To manage the Fund.

(3) To determine when a tax credit certificate must be issued.

(4) To perform other duties permitted by North Carolina law and consistent with the requirements of this Article.

(c) Conflict of Interest. – The corporation must adopt conflict of interest policies that include all of the following provisions:

(1) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from having any financial interest in a company to which the entity makes loans.

(2) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from accepting employment in a company to which the entity makes loans for a period of at least six months before and after the service of the employee, officer, or director with the entity.

(d) Prohibition. – The corporation is prohibited from pledging the credit or taxing power of the State or any political subdivision of the State, or making its debts payable out of any moneys or resources except those of the corporation. The obligations of the corporation are not obligations of the State or any political subdivision of the State but are obligations of the corporation payable solely and only from the corporation's resources.

"**§ 53A-102. Board of Directors.**

The incorporator must name the initial board of directors of the corporation for terms set forth in the corporation's bylaws. The incorporator must exercise due care to assure that the persons named provide the board with the requisite financial, business, and scientific experience necessary in order to carry out the duties of the corporation. The initial board of the corporation consists of nine members, including the president of the North Carolina Biotechnology Center and the North Carolina Secretary of Commerce, who shall be permanent ex officio voting members of the board. After the initial board is named, vacancies will be filled and new directors elected by the board in the manner provided by the corporation's bylaws.

The president of the North Carolina Biotechnology Center shall serve as chair of the board and the North Carolina Secretary of Commerce shall serve as vice-chair.

"**§ 53A-103. North Carolina Life Science Development Fund.**

(a) Organization. – The board must form a for-profit limited liability company under Chapter 57C of the General Statutes known as the North Carolina Life Science Development Fund, LLC. The corporation is the sole managing member of the limited liability company.

(b) Purpose. – The Fund may make loans to life science companies for the following purposes:

(1) The acquisition or expansion of capital facilities in North Carolina and to acquire capital equipment to be located in North Carolina.

(2) Regulatory, documentation, and other costs required to make the facilities or equipment to be located in North Carolina operational.

(c) Investments in the Fund. – The Fund is organized to accept nonmanaging member investments from designated investors that pay a designated rate of return and a scheduled redemption, in accordance with rules adopted by the corporation. Investments by designated investors in the Fund are permissible investments under applicable laws of the State for State-chartered banks, State-chartered savings and loan associations, State-chartered credit unions, State-chartered industrial loan corporations, domestic insurance companies, or any combination of these entities.

(d) Management Fee. – The corporation may collect a management fee from the Fund. The fee may not exceed the amount needed to pay for reasonable and necessary costs and expenses of the corporation for the activities described in this Article. The corporation is not entitled to receive any other compensation from the Fund.

"**§ 53A-104. Loans by North Carolina Life Science Development Fund.**

(a) Loan Criteria. – The board must determine to what extent and when the Fund should loan funds to qualified life science companies engaged in manufacturing based on the evaluation of the following factors:

(1) Borrower's written business plan.

(2) Borrower's written manufacturing or service plan.

(3) Borrower's history of attracting operating capital from investors, grants, or other lenders.

(4) Borrower's management team.

(5) Borrower's demonstration of engaging in high-tech manufacturing or service in North Carolina.

(6) Borrower's job creation potential in North Carolina.

(7) Borrower's financial resources.

(8) Any other factors considered by the board to be consistent with this Article.

(b) Loan Cap. – The maximum cumulative amount loaned to any borrower may not exceed thirty million dollars ($30,000,000).

"**§ 53A-105. Equity certificates.**

(a) Equity Certificate. – Each designated investor will receive from the Fund an equity certificate. Once issued, an equity certificate is binding on the Fund and the corporation and may not be modified, terminated, or rescinded. An equity certificate must reflect all of the following:

(1) That the investor is a nonmanaging member of the Fund.

(2) The amount of the investment.

(3) The dates and amounts of each guaranteed return on the investment.

(4) The date upon which the investment will be returned to the investor.

(5) That the corporation will issue a tax credit certificate when required by subsection (b) of this section.

(b) Payment. – The corporation must determine at least 20 days prior to the due date of any payment to a designated investor required by an equity certificate whether the Fund will be able to make the payment in full, taking into consideration the cash flow needs of the Fund, including funding its continuing operations and obligations to the corporation for costs and

expenses. In the event the corporation determines there will be a shortfall, the corporation must issue the designated investor a tax credit certificate. The tax credit certificate must include all of the following information:

(1) The amount of the initial equity investment.
(2) The rate of return on the invested capital.
(3) The calculation formula for determining the scheduled aggregate return on the initial equity investment.
(4) The due date of the payment.
(5) The amount of the shortfall for which a tax credit may be claimed under Article 3L of Chapter 105 of the General Statutes.

"**§ 53A-106. Cap on tax credit certificates.**

(a) Cap Amount. – At no time may the total unpaid amount of the issued equity certificates and the remaining obligations of the Fund to designated investors as reflected in the equity certificates backed by potential tax credit certificates exceed one hundred million dollars ($100,000,000). The chair and vice-chair of the board may by unanimous vote require that the Fund repay to the State any or all of the tax credits taken pursuant to a tax credit certificate issued under G.S. 53A-105. The decision of the chair and vice-chair is binding on the corporation and on the Fund. Upon payment, the cap on equity certificates under this subsection is increased to the extent of the payment.

(b) Outstanding Issuances. – So long as a tax credit certificate has been issued and has not been repaid as permitted in subsection (a) of this section, the board must determine, on or before each fifth anniversary of the first issuance of the tax credit certificates, and more frequently if the board wishes, whether and to what extent the Fund has the ability to repay the State for the tax credits, considering the Fund's outstanding obligations, ongoing operation, and need for further lending as contemplated in this Article. The board must include this information in the report required by G.S. 53A-107.

"**§ 53A-107. Annual audit and report.**

(a) Audits. – Each calendar year, the corporation must conduct an audit of the activities of the Fund to be made as described in this subsection. The audit must be conducted by an independent auditor engaged by the board. Except for the contract for auditing services, the independent auditor may have no business, contractual, or other connection to the corporation or to the Fund.

(b) Reports. – The corporation must publish an annual report of the activities conducted by the Fund. The annual report must include all of the following:

(1) A copy of the audit of the Fund as required by subsection (a) of this section.
(2) A review of the progress of the corporation in implementing the purposes stated in G.S. 53A-101 and the business plan of the Fund.
(3) A description and amount of the issuance of any tax credit certificates issued under this Article.

"**§ 53A-108. Dissolution.**

Upon dissolution of the Fund, the corporation will be liquidated and dissolved, and any assets owned by the Fund or the corporation must be distributed to the State."

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

"Article 3L.

"Life Science Development Tax Credits.

"**§ 105-129.100. Tax credit.**

(a) Credit. – A taxpayer that receives a tax credit certificate from the North Carolina Life Science Development Corporation under Article 4 of Chapter 53A of the General Statutes is allowed a tax credit equal to one hundred percent (100%) of the amount specified in the certificate. The credit is allowed against the franchise tax levied in Article 3 of this Chapter, the

premium tax levied in Article 8B of this Chapter, and the income taxes levied in Article 4 of this Chapter.

(b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

(d) Substantiation. – A taxpayer allowed a credit under this Article must maintain and make available for inspection any information or records required by the Secretary. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

"**§ 105-129.101. Reports.**

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer, for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 3. Section 2 of this act is effective for taxable years beginning on or after January 1, 2010. The remainder of this act is effective when it becomes law.

CORRECTED NOTICE

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 22, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Remove HB 814 – Small Business Assistance Fund

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 814	Small Business Assistance Fund!	Representative Crawford, Jr.
HB 1625	Simplify Taxation of Certain HOA Property.	Representative Justice Representative McComas Representative Hughes
SB 308	Low Profit Limited Liability Company.	Senator Jacumin
SB 943	Expand Film Credit.	Senator Garrou

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 3:45 p.m. on **July 21, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

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HB 1625	Simplify Taxation of Certain HOA Property.	Representative Justice Representative McComas Representative Hughes
SB 308	Low Profit Limited Liability Company.	Senator Jacumin
SB 943	Expand Film Credit.	Senator Garrou

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:40 p.m. on **July 20, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, July 22, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 308	Low Profit Limited Liability Company	Senator Jacumin
SB 943	Expand Film Credit	Senator Garrou
HB 1625	Simplify Taxation of Certain HOA Property	Representative Justice

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, July 22, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, July 22, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Adams, Carney, Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Allen, Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Mills, Pierce, Rapp, Samuelson, and Warren. Staff Counsel Drupti Chauhan, Brad Krehely, and Martha Walston were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 308 - A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FORMATION OF A LIMITED LIABILITY COMPANY AS A LOW-PROFIT LIMITED LIABILITY COMPANY. Sponsor: Senator Jacumin
Senator Jacumin presented the bill and said that Representative Crawford was the primary sponsor of the House companion bill HB 769. SB 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C). The bill is the result of a 2007 Senate/House study committee to determine ways North Carolina manufacturers can compete with foreign manufacturers. He directed the Committee's attention to a handout that showed how the new structure can do this. Discussion followed. Representative Goforth moved for a favorable report for SB 308 with a re-referral to the Committee on Finance. The motion passed.

SB 943 – A BILL TO BE ENTITLED AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.
Sponsor: Senator Garrou. Senator Garrou presented the film incentive bill and said that it would increase the tax credit for a production company from 15% to 25% of the company's qualifying expenditures. She directed the Committee's attention to a handout prepared by the NC Film Office. The incentive would be raised to 25% and would bring in over 4,000 jobs to North Carolina in the next year. Secretary of Commerce Keith Crisco spoke in favor of the bill. Representative McComas spoke in favor of the bill and said that we need to maintain the infrastructure that we have had for so many years. It is a very important bill that affects the whole state, especially small businesses, and trades.

Representative Hughes spoke in favor of the bill and told of her relationship with the Film Commission in Wilmington while serving on the City Council when incentives were much lower. She said that other states have higher incentives and are employing their own people and not North Carolinians. Bill Saffo, Mayor of Wilmington, appeared before the Committee in support of the bill. He said that it was about saving jobs, and that we are losing this industry to other states due to higher incentives and feels North Carolina can be competitive at 25%. Discussion followed. Representative Carney moved for a favorable report for SB 943 with a re-referral to the Committee on Finance. The motion passed.

The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Register	National Association of Social Workers-NC Chapter
Charles Ogiba	" " " " "
Michelle Stanley	" "
Emily Swingly	" "
Bruce Garner	Dept Sec of State
Cheri Myers	" "
Victoria Hawkins	Bone + Assoc.
Natalie English	Charlotte Chamber
Mary Jo McMillan	NC AFL-CIO
Penny Griffin	School of Gov.
Harrison Gilbert	Governor's Office

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Dow	MWC
Connie Denise	MWC
Bill Vassar	EUE/SG
Jake Cashion	WS Chamber
Ann Anne Crumpler	Address:- 2315 Lake Dr. Raleigh 27609 BOT- UNC School of the Arts
Gaither Aldrich	NC Film Office / DOC
Jeanelle Lindsay	Rep. Adams Daughter
Kathryn Dalton	NCRMA
John Bowdish	Astra Zeneca
Starn	House
Dave	SA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Snyderwine	CTNC
Edgar Miller	CTNC
John Meredith	MCW LLC
Rebecca Clark	Piedmont Triad Film Commission Greensboro
Lauren Weingarten	Nc Film
Sophie Mihalko	UNCSA
Henry Jones	Attorney – Raleigh
Roz Savitt	TVC CCC
Harry Kaplan	MWC
James Ramoser	
Bruce Thompson	Parker Poe

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAUL Mayn	NCLM
JOHN PEREDON	NCEDA
Doug Heron	Williams Mullen
Stephanie McGarrah	Commerce
Tracy Kimbrell	Parker Poe
Amy McConkey	Smith Anderson
Amy Hobbs	MWC
Bob Spearman	NCFA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jolie Goodman	KC Chamber

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 22, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hollis	K+L Gates

Rm. 1128
LT 04

HOUSE PAGES

MERCE, SMALL BUSINESS & ENTREPRENEURSHIP
NAME OF COMMITTEE _____ **DATE** 7-22-09

1. **Name:** Cara Reat
   County: Forsyth
   Sponsor: Speaker Joe Hackney
2. **Name:** Rebecca Rouse
   County: Mecklenburg
   Sponsor: Samuelson
3. **Name:** Edwin Borden
   County: Wake
   Sponsor: Martin
4. **Name:** Bree Gawron
   County: Brunswick
   Sponsor: Iler
5. **Name:** Tyler Hines
   County: Cumberland
   Sponsor: Glazier

SGT-AT-ARM

1. **Name:** TOM WILDER
2. **Name:** CARLTON ADAMS
3. **Name:** JUDY TURNER
4. **Name:** FRANK PREVO

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for
SB 308 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FORMATION OF A LIMITED LIABILITY COMPANY AS A LOW-PROFIT LIMITED LIABILITY COMPANY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

Handout 1
7-22-09

SB 308 (= H 769) LOW-PROFIT LIMITED LIABILITY COMPANY

The Furniture Industry
(Case Goods)
The Future of the Industry
United States Versus China

Kenan-Flagler Business School Study

Production Cost Analysis

	US Factory	Chinese Factory
Wholesale Selling Price	$600	$600
	US Production Cost	Asian Production Cost
Raw Materials	$225	$282
Labor	$105	$30
Freight	--	$138
Overhead	$210	$60
Est. Operating Profit	$60	$90*

*50% more profit than USA factory

Production Cost Analysis with L^3C

	US Factory with L^3C	Chinese Factory
Wholesale Price	$600	$600
Raw Materials	$225	$282
Labor	$105	$30
Freight	--	$138
Overhead	$150	$60
Est. Operating Profit	$120*	$90

*33% more profit than China factory

Notes

The legislation for the L^3C (Low Profit Limited Liability Company) was developed by Washington attorney Mark Owens. Mr. Owens worked for the IRS for 25 years in the Exempt Organizations section. Mr. Owens headed up this section the last 10 years of his IRS career.

The L^3C legislation has been passed in the following states: Vermont, Michigan, The Crow Indian Nation, Illinois, Maine, Wyoming and Utah. It has been introduced in North Dakota, Oregon, Tennessee, Arkansas, Missouri and Montana.

Some of the projects in process include: 1. Re-equipping and renting manufacturing plants in Michigan to new companies; 2. Montana Food Bank Network Processing Plant; 3. An Infrastructure Company with a program to build wooden bridges using technology from Jay Rubino and others; 4. Broadband in the rural areas of several states; 5. A large church-based information and entertainment center to serve inner-city poor in Dallas; 6. Low income housing projects; 7. Elderly housing projects; 8. Newspapers including the Peoria Journal Star; 9. Hearing aid manufacturing for the poor in Africa; 10. PACE (aging in place) centers for the Volunteers of America. There are dozens and dozens of projects in process in addition to those listed above.

Foundations have more than $500 billion in assets. They have to give away 5% each year—that's $25 billion. Treating North Carolina as an average state that would equate to approximately $500,000,000, part of which could be available to new and struggling businesses through the L^3C structure.

Low-Profit Limited Liability Company (L^3C)

The Act would recognize a new form of legal entity, the low-profit limited liability company or L^3C. The legislation creating the L^3C tracks exactly the federal tax law requirements for program-related investments. Set forth below is a summary of the key aspects of the L^3C.

1. What is it?

Generally: A limited liability company that generates modest profit while carrying on a business that has a charitable purpose.

North Carolina: Proposed state legislation would recognize the L^3C as a new legal entity. Under North Carolina law, an L^3C would be a business entity that:

- significantly furthers the accomplishment of a charitable or educational purpose,
- would not have been formed but for its relationship to the accomplishment of the charitable or educational purpose,
- does not have a significant purpose of income production or property appreciation, and
- does not seek to accomplish a political or legislative purpose.

2. Who can invest in it?

- Individuals, governments, and for-profit corporations can invest in L^3C s.
- Private foundations may also invest in L^3C s because the North Carolina statute under which they will be formed incorporates exactly the federal tax law requirements for program-related investments ("PRI").

3. How will a private foundation's L^3C investment be treated?

Because they satisfy the PRI requirements, investments in L^3C s are:

- qualifying distributions for purposes of the 5% payout requirement;
- not included in a foundation's asset base for purposes of calculating minimum investment return;
- not business holdings for purposes of the excess business holdings prohibition; and
- not considered jeopardizing investments.

4. Why was the L^3C created?

- The L^3C was born from a desire to save endangered jobs by saving endangered industries.
- It is intended to encourage investment in struggling industries such as the U.S. furniture and textile industries.
- The theory is that such businesses will be more likely to attract investors if they are structured as L^3C s because they will appeal to nonprofits, which will be willing to accept a lower rate of return than for-profit investors and can treat their investments as charitable distributions.
- The goal is to help struggling enterprises stay in business, thereby providing jobs and community benefits, by reducing the pressure to produce market-rate profit levels.

Marcus S. Owens, Attorney February 19, 2007

SENATE BILL 308:
Endangered Manufacturing and Jobs Act

2009-2010 General Assembly

Committee:	Senate Finance	**Date:**	June 29, 2009
Introduced by:	Sen. Jacumin	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Second Edition S308-CSRBf-39		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C). The PCS removes the provisions from the bill that would have provided enhanced tax incentives to an endangered manufacturer.***

BILL ANALYSIS: Chapter 57C provides for the formation of a limited liability company. A low-profit limited liability company is a limited liability company that is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with these three requirements:

- To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code.
- To operate so that no significant purpose of the company is the production of income or the appreciation of property.
- To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code.

Under current law, a limited liability company could choose to put these conditions on its operations by including them in its articles of organization and by operating in accordance with them. However, current North Carolina law does not provide a designation specific to a company that does so. **Senate Bill 308** would recognize the formation of a low-profit limited liability company and allow that company to use the designation "L3C". Like a limited liability company, a L3C is subject to federal and State tax and investments in a L3C are not tax deductible.

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

BACKGROUND: Vermont became the first state to recognize the L3C as an official legal structure in April 2008 and Michigan become the second state in January 2009. The formation of a L3C is designed to facilitate program-related investments (PRI) by private foundations. Private foundations must distribute at least 5% of their capital for charitable purposes to maintain their nonprofit status. Although foundations often expend these funds through grants, they may also meet the expenditure requirement with IRS-sanctioned PRIs. A PRI is an investment that supports charitable activities but may involve the potential return of capital. An example of a PRI is a loan, a loan guarantee, and an equity investment in a charitable organization.

Foundations do not usually make PRIs without an IRS private letter ruling that the investment meets the IRS requirements as an acceptable PRI. The expense of obtaining a private letter ruling deters foundations from this form of investment. The founders of the L3C designation hope that the IRS or Congress will choose to treat an investment in a L3C as a PRI without the need for a private letter ruling because the three requirements to form as a L3C mirror the IRS requirements for a PRI. Neither the IRS nor Congress has evidenced any movement on this issue.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 308 (Third Edition)

SHORT TITLE: Low-Profit Limited Liability Company.

SPONSOR(S): Senator Jacumin

FISCAL IMPACT

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

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	See Assumptions and Methodology				
EXPENDITURES	$30,050	$0	$0	$0	$0
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: The third edition of Senate Bill 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C).

ASSUMPTIONS AND METHODOLOGY:
Senate Bill 308 provides that a low-profit limited liability (L3C) company is a limited liability company (LLC) under North Carolina law. Low-profit limited liability companies (L3Cs) have been proposed as a means for encouraging investment in struggling business enterprises. Under this theory, non-profit organizations that are required to spend a certain percentage of their assets each year to maintain their non-profit status would invest in L3Cs that have some social purpose. If structured correctly, it is possible that the IRS could treat this investment as a program-related investment (PRI) that would count towards the percentage that must be spent in order to maintain non-profit status. However, neither the IRS nor Congress has chosen to treat an investment in a L3C as a PRI. Because non-profits do not face the same pressures as for-profit investors, the theory states that non-profits would be willing to accept a lower rate of return than would be required for a for-profit investor. Struggling businesses might then be able to stay in business, providing jobs to employees and other community benefits, because the pressure to produce market-rate profit levels

had been removed. One of the benefits of L3Cs is that no special legal structure, other than the LLC structure, is needed to establish an L3C.

Low Profit Limit Liability Companies will be a new category of business entity in North Carolina. The agency estimates that it will incur $30,000 in one-time start-up costs for programming. This programming will require a month of work and include the following technical changes that are necessary to include this category in the agency's system: 1) amend the LLC profile to include the low profit corporate ending (L3C) that will be able to be queried; 2) write a document to include certification statement that the entity's purpose satisfies the requirements of 57C-1-03(12a); 3) create a document to be available within agency's Knowledge Base, with all examination/rejection parameters; 4) create a document for placement on the schedule of fees/documents for LLC's online; and 5) provide documents that will be searchable and viewable online under the profile. Additionally, two weeks are required for text development of document at a cost of $50. The agency estimates total one time costs of $30,050 and no additional personnel or recurring funding is required.

As with the Limited Liability Companies (LLC), revenue is anticipated from fees charged to the L3Cs in the amount of $125 per entity upon organization, and $200 per entity for the annual reporting fee. However, these fees will be deposited into the General Fund and not into the agency's budget as a receipt. Therefore, an appropriation would be required to provide the $30,050 in one time costs. However, as this is a new category of business entity, neither the Department of the Secretary of State nor the Fiscal Research Division (FRD) has been able to determine the number of business entities that may be established.

Since L3C legislation has become law in the Crow Indian Nation and at least five states – Maine, Michigan, Utah, Vermont, and Wyoming, and possibly in Illinois, FRD staff contacted the states to obtain information about fiscal analysis. In Michigan, Senate staff reviewed background information from the Department of Energy, Labor, and Economic Growth, but did not expect any fiscal impact. This was based upon an assumption that providing an alternative organizational structure for a corporation would not generate additional transactions or work for the department. Additionally, the regulatory agencies in Utah did not anticipate any additional administrative costs for the new classification. In Vermont, neither Legislative nor Secretary of State's staff prepared an analysis. Although Vermont was the first state to pass legislation in April 2008, no data has been collected in regards to the impact of the new designation since passage of the bill. Illinois has not prepared an analysis of its bill. At this time no information about fiscal impact is available from the Crow Indian Nation, Maine, or Wyoming.

SOURCES OF DATA: Secretary of State's Office

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Michele Nelson

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 7, 2009

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 308:
Low-Profit Limited Liability Company

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 15, 2009
Introduced by:	Sen. Jacumin	**Prepared by:**	Brad Krehely
Analysis of:	Third Edition		Committee Co-Counsel

SUMMARY: Senate Bill 308 would recognize a new type of corporate designation known as a low-profit limited liability company (L3C).

BILL ANALYSIS: Chapter 57C provides for the formation of a limited liability company. A low-profit limited liability company is a limited liability company that is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with these three requirements:

- To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code.
- To operate so that no significant purpose of the company is the production of income or the appreciation of property.
- To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code.

Under current law, a limited liability company could choose to put these conditions on its operations by including them in its articles of organization and by operating in accordance with them. However, current North Carolina law does not provide a designation specific to a company that does so. **Senate Bill 308** would recognize the formation of a low-profit limited liability company and allow that company to use the designation "L3C". Like a limited liability company, a L3C is subject to federal and State tax and investments in a L3C are not tax deductible.

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

BACKGROUND: Vermont became the first state to recognize the L3C as an official legal structure in April 2008 and Michigan become the second state in January 2009. The formation of a L3C is designed to facilitate program-related investments (PRI) by private foundations. Private foundations must distribute at least 5% of their capital for charitable purposes to maintain their nonprofit status. Although foundations often expend these funds through grants, they may also meet the expenditure requirement with IRS-sanctioned PRIs. A PRI is an investment that supports charitable activities but may involve the potential return of capital. An example of a PRI is a loan, a loan guarantee, and an equity investment in a charitable organization.

Foundations do not usually make PRIs without an IRS private letter ruling that the investment meets the IRS requirements as an acceptable PRI. The expense of obtaining a private letter ruling deters foundations from this form of investment. The founders of the L3C designation hope that the IRS or Congress will choose to treat an investment in a L3C as a PRI without the need for a private letter ruling because the three requirements to form as a L3C mirror the IRS requirements for a PRI. Neither the IRS nor Congress has evidenced any movement on this issue.

'308-SMRN-107(e3) v1

Cindy Avrette, Counsel to Senate Finance, contributed substantially to the drafting of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 308
Corrected Copy 2/27/09
Finance Committee Substitute Adopted 7/1/09

Short Title: Low-Profit Limited Liability Company. (Public)

Sponsors:

Referred to:

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FORMATION OF A LIMITED LIABILITY COMPANY AS A LOW-PROFIT LIMITED LIABILITY COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-2-01 is amended by adding a new subsection to read:

"(d) L3C. – Formation and operation of a limited liability company as a low-profit limited liability company is a lawful purpose. A low-profit limited liability company is a limited liability company whose articles of organization state that the company is formed for both a business purpose and a charitable purpose that requires operation of the company in accordance with the requirements of this subsection. A company that operates in accordance with these requirements is considered a for-profit entity and not a charitable entity for all tax purposes. A company's failure to operate in accordance with these requirements does not affect its status as a limited liability company. The charitable purpose requirements are as follows:

(1) To accomplish one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Code, as defined in G.S. 105-228.90.

(2) To operate so that no significant purpose of the company is the production of income or the appreciation of property. The fact that a company produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose to produce income or accumulate capital.

(3) To operate so that no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Code, as defined in G.S. 105-228.90."

SECTION 2. G.S. 57C-2-21 reads as rewritten:

"**§ 57C-2-21. Articles of organization.**

(a) The articles of organization must set ~~forth:~~forth all of the following:

(1) A name for the limited liability company that satisfies the provisions of G.S. 55D-20 and ~~G.S. 55D-21;~~G.S. 55D-21.

(2) If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability ~~company;~~company.

(3) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an ~~organizer;~~organizer.

(4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that ~~address;~~address.

(4a) The street address, and the mailing address if different from the street address, of the limited liability company's principal office, if any, and the county in which the principal office, if any, is ~~located; and~~located.

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members.

(6) If the limited liability company is formed as a low-profit limited liability company, a statement that operation of the company must meet the charitable purpose requirements of G.S. 57C-2-01(d).

(b) The articles of organization may set forth any other provision, not inconsistent with law, including any other matter that under this Chapter is permitted to be set forth in an operating agreement.

(c) The articles of organization need not set forth any of the powers enumerated in this Chapter."

SECTION 3. G.S. 55D-20(a) is amended by adding the following subdivision to read:

"(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C"."

SECTION 4. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

SB 943 A BILL TO BE ENTITLED AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 943: Expand Film Credit

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 22, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 943 would increase the income tax credit for a production company from 15% to 25% of the company's qualifying expenditures. The bill would become effective for taxable years beginning on or after January 1, 2009.***

[As introduced, this bill was identical to H977, as introduced by Reps. Gibson, McComas, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

CURRENT LAW: North Carolina's film credit is a refundable income tax credit equal to 15% of the qualifying expenses spent by a production company in connection with a production. The amount of the credit with respect to a feature film production is capped at $7.5 million. In order to obtain the credit, the taxpayer must have qualifying expenses in excess of $250,000. Qualifying expenses are the total amount spent in North Carolina for the following:

- Goods and services leased or purchased by a production company in connection with a production.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense.
- Cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expense 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 distribution the credit among its owners.

BILL ANALYSIS: Senate Bill 943 would increase the amount of the refundable credit from 15% of the qualifying expenditures to 25% of the qualifying expenditures. The credit percentage has not changed since the General Assembly enacted the credit in 2005. The refundable tax credit replaced the film industry development grant program. The incentive is targeted at feature films, episodic television series, and commercial advertising.[1]

EFFECTIVE DATE: The bill would become effective for taxable years beginning on or after January 1, 2009.

[1] The credit does not apply to the following: political advertising, television production of a news program or live sporting event, material that is obscene, as defined in G.S. 14-190.1, or a radio production.

BACKGROUND: The North Carolina Film Office commissioned two studies funded in partnership with EUE Screen Gems Studios, IATSE Local 491, Premiere Entertainment Services, Charlotte Regional Film Commission, Piedmont Triad Film Commission, Wilmington Regional Film Commission, Cinelease, and Illumination Dynamics:

- *"Economic and Fiscal Impacts of the North Carolina Film Credit Program"*, June 2009, prepared by Ernest & Young. This study presents estimates of the economic and tax impact of three components: film production activities; tourism related to NC films; and capital expenditures in NC film facilities.
- *"Economic Impact Study of the Production of a 'Mid-Major' Motion Picture on the Economy of Southeastern North Carolina"*, Summer 2009, prepared by Dr. William Hall of the Cameron School of Business at the University of North Carolina at Wilmington. This study is a case study that identifies the spending impacts of a film on Brunswick, New Hanover, and Pender Counties.

The studies are available upon request. Both studies recognize the number of jobs generated by film production in the State, the direct and indirect spending stimulus on the region's economy, the capital investments made by production companies, the resulting film generated tourism, and the contribution of these activities to the State and local government's tax collections.

The Ernest & Young study estimates the State's return on investment (ROI) from the refundable income tax credit. In forming the ROI estimate, the study analyzed the impact of the credit at the rate of 15% in 2007 and, using projections from the NC Film Office, estimates the impact of the credit at the rate of 25% for 2010 and 2011.

The study found that film productions qualifying for the credit in 2007 accrued an estimated net present value of $22 million of refundable tax credit cost to the State and $29 million of State and local tax revenue. In considering State tax ROI, the study estimated the State's ROI was $0.98 for each dollar of tax credit expenditure. The State and local ROI was $1.30. This estimate assumes that the film productions qualifying for the credit would not have been produced in the State in absence of the credit.

The study estimates that the total State and local tax impacts from film productions, tourism, and capital expenditures related to film production would be $48 million in 2010 and $57 million in 2011 under a 25% tax credit. Under this scenario, the State tax ROI from each dollar of tax credit expenditure would be $0.69 in 2010 and $0.67 in 2011. The State and local ROI would be $0.92 in 2010 and $0.89 in 2011.

S943-SMRQ-121(e1) v3

**Cindy Avrette substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 943

Short Title:	Expand Film Credit.	(Public)
Sponsors:	Senator Garrou.	
Referred to:	Finance.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.47(b) reads as rewritten:

"(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year."

SECTION 2. G.S. 105-151.29(b) reads as rewritten:

"(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2009.

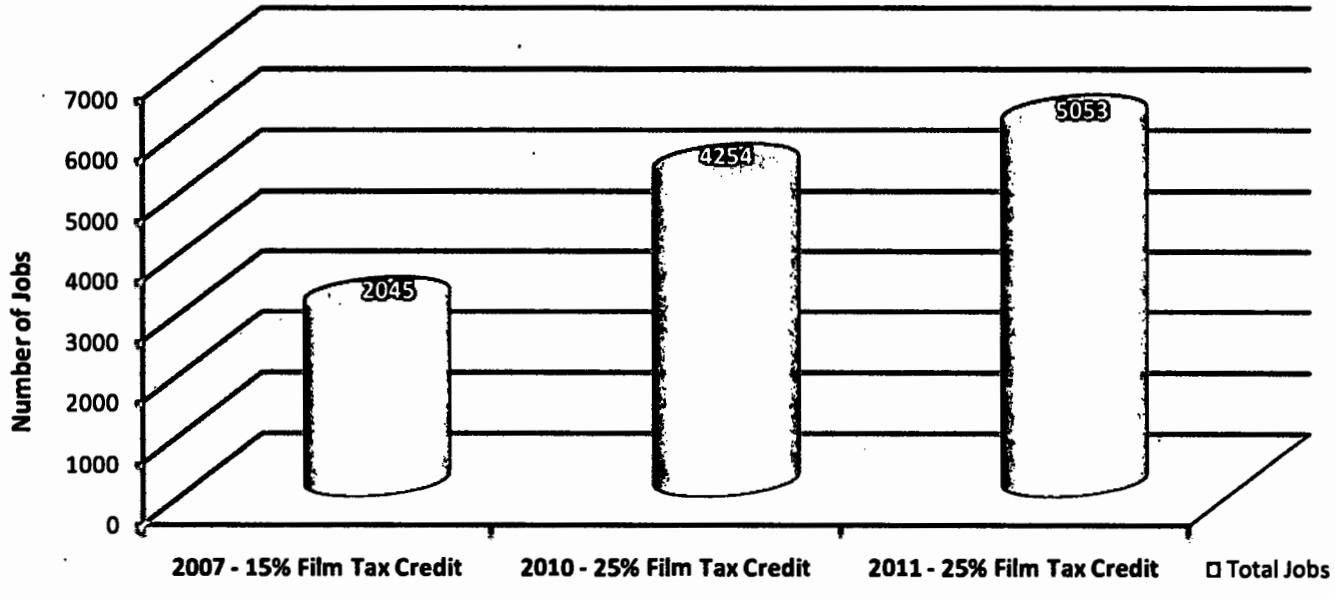
SENATE BILL 943, Expand Film Credit

North Carolina Department of Commerce, North Carolina Film Office

In August of 2006, the General Assembly enacted the first film credit of 15%. As such NC has a vibrant film industry. Film credit change to 25% will enable NC's film industry to remain competitive.

- **28 states** have **greater** film incentives than NC, including:
  - Georgia 30%
  - Illinois 30%
  - Louisiana 25%
  - Michigan 42%
  - South Carolina 20% - 30%
  - Massachusetts 25%
- **42 states** have passed incentives to recruit and retain film productions. NC is losing productions to other states because of their increased credits.
- Presently over **2,500** people are employed in the film industry in NC. With a 25% film credit, NC may create and retain over **5,000** knowledge-based, creative class jobs.
- NC's current 15% film credit has been used by 34 film projects in 28 counties. These productions spent **$162.8M in NC in 2007**. The return on investment to the state and local governments has been $1.30 for every $1 spent.
- NC needs an increased incentive to prevent the loss of our highly-skilled workforce to other states. NC has a competitive advantage within the United State because of our extensive infrastructure and highly-skilled crew base. An increase to a 25% credit would result in **$300M in spending annually** in the state by the film industry.
- A 25% film credit may not have implications for 2 fiscal years, because NC's film credit is a *post performance* rebate.
- In 2007, 5,711 degrees were given from the 41 film-related degree programs at NC's universities and community colleges.
- Private companies have invested millions of dollars in film infrastructure. With a 25% film credit, private company investment commitment would increase infrastructure in studios, film equipment rental, lumber, hotels and restaurants.

Job Creation

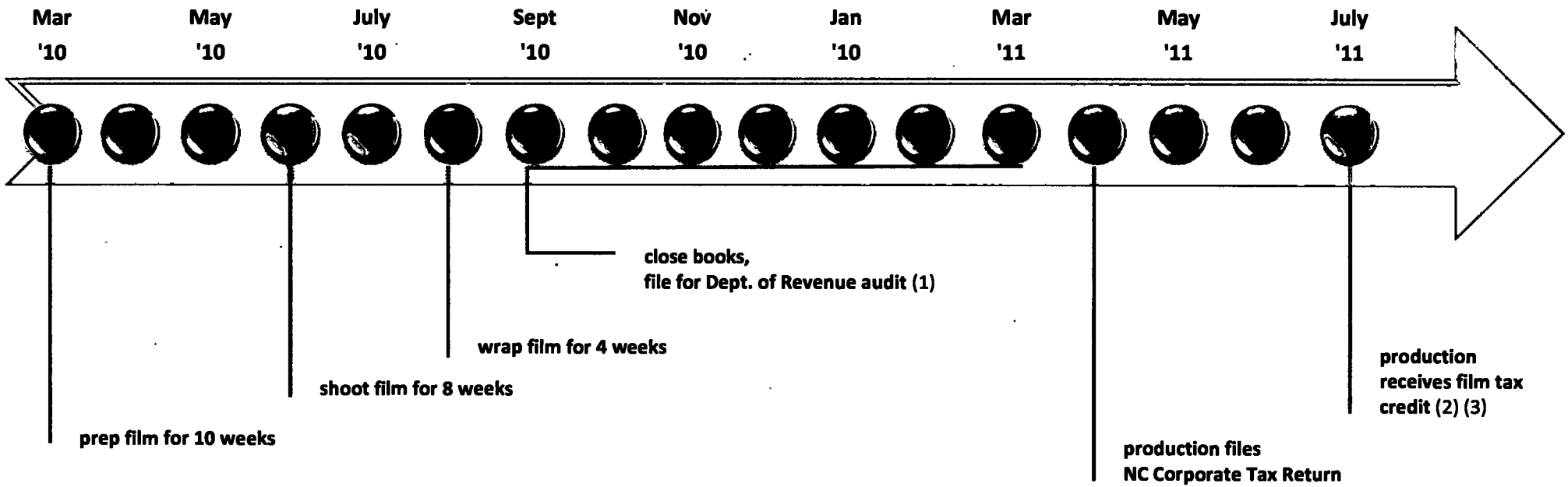


NC Department of Commerce, July 2009

Screen Gems cautiously eyes Charlotte expansion (7/21/09) (Wilmington) Star News - EUE/Screen Gems, which is based in New York but owns a 50-acre studio with 10 sound stages in Wilmington, has eyed the Queen City for possible expansion of its company for about three years, according to Executive Vice President Bill Vassar.

Timeline of Film Tax Credit Payment

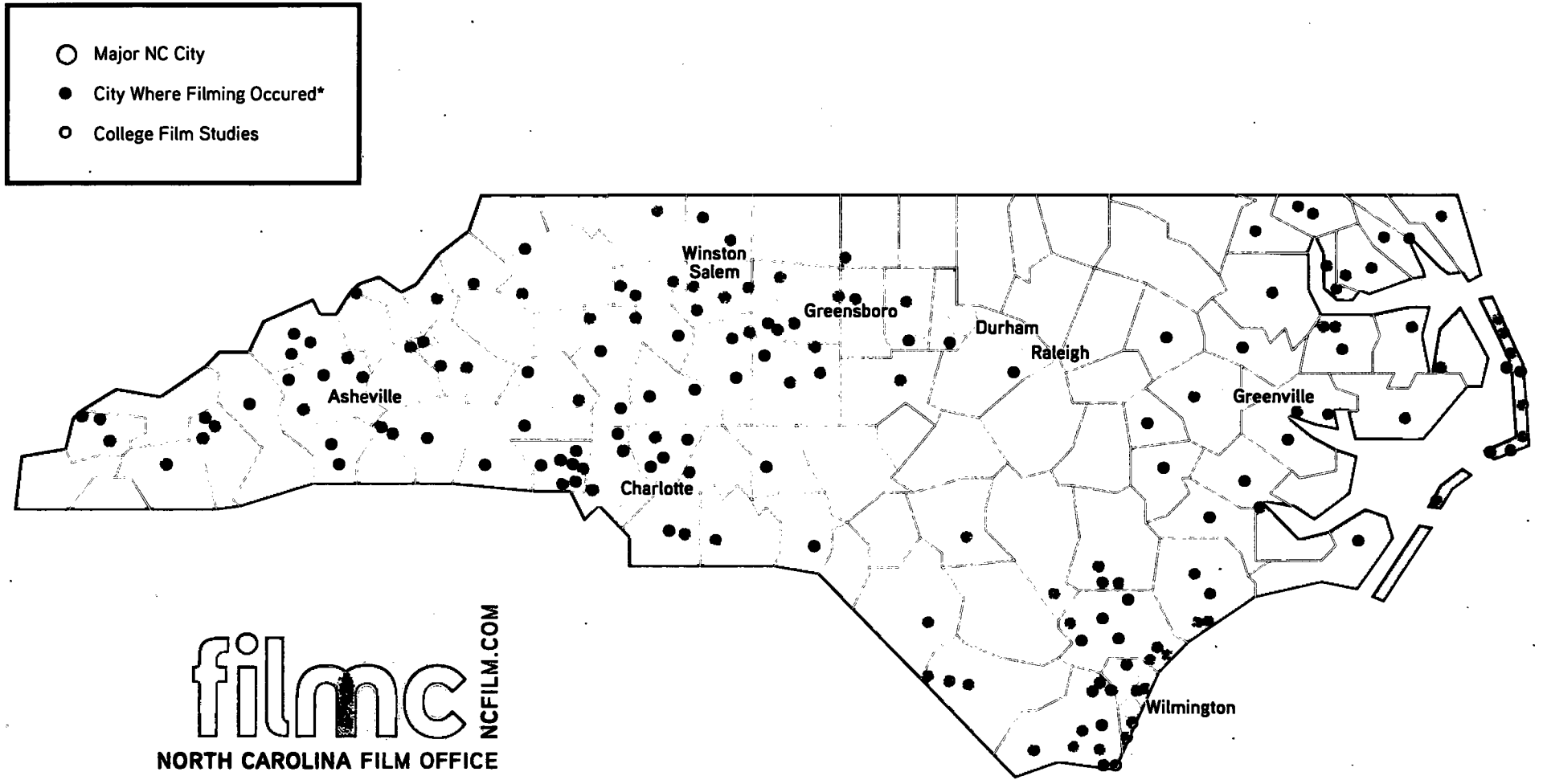
A 25% film credit may not have implications for 2 fiscal years, because NC's film credit is a *post performance* rebate.



(1) **Delays in standard DOR audit timeline will delay payment of tax credit until Fiscal Year 2012.**

(2) **Productions beginning in NC after March 2010 will likely receive tax credit payment in Fiscal Year 2012.**

(3) **Major Production Companies filing consolidated tax returns will likely not file NC Corporate Tax Returns until 2 – 3 years after the production is completed in NC.**



filmnc NCFILM.COM

NORTH CAROLINA FILM OFFICE

*individual dots may reference up to 100 films and/or television productions

Production Incentives in 2009

Brenda Lee (Rep. Dickson)

From: Marilyn Suitt (Rep. Hughes)
Sent: Wednesday, July 22, 2009 12:12 PM
To: Rep. D. Bruce Goforth; Rep. Alma Adams; Rep. Becky Carney; Rep. Bill Owens; Rep. Cullie M. Tarleton; Rep. Edith Warren; Rep. Garland Pierce; Rep. Jean Farmer-Butterfield; Rep. Margaret H. Dickson; Rep. Randy Stewart; Rep. Ray Rapp; Rep. Ty Harrell; Rep. Lucy T. Allen; Rep. Elmer Floyd; Rep. Bob England; Rep. Michael Wray; Rep. Nelson Cole; Rep. R. Van Braxton; Rep. Winkie Wilkins
Subject: SB 943

Please note that SB 943, Expand Film Credit, will be discussed in Commerce, Small Business and Entrepreneurship today at 1pm. Your support of this bill will be appreciated.
Sandra Spaulding Hughes

Marilyn M. Suitt
Legislative Assistant
Office of Representative Sandra Spaulding-Hughes
537 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603

SENATE OF NORTH CAROLINA

ENATOR LINDA GARROU
2ND DISTRICT

627 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, N.C. 27603-5925
919 733-5620
919 715-5407 FAX
lindag@ncleg.net

COMMITTEES

APPROPRIATIONS/BASE BUDGET, CHAIR
PENSIONS, RETIREMENT AND AGING, CO-CHAIR
COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP
EDUCATION/HIGHER EDUCATION
FINANCE

The Honorable Margaret Highsmith Dickson
16 W. Jones Street, Room 2217
Raleigh, NC 27601

July 21, 2009

Dear Madam Chair,

The House Commerce Committee will be considering SB 943, "Expand Film Tax Credit," of which I am the primary sponsor. I want to thank you in advance for your consideration.

SB 943, which will raise the film tax credit to 25%, is a necessary piece of legislation that will provide crucial well-paying jobs for North Carolina as we continue to struggle through the worst recession in a generation. Since North Carolina increased its film tax credit to 15% in 2006, it has been used for 34 film projects in 28 counties, according the NC Film Office. The return on the investment to the state and local governments was $1.30 for every $1 spent.

North Carolina has watched its neighbors, including South Carolina and Georgia, and other states augment the value of their tax incentives in recent years, and consequently, film companies have gravitated toward them. We must be competitive.

There is no reason North Carolina should lose this business. We have a beautiful state that offers a host of different scenery—from our treasured mountains, to our gorgeous coast. Furthermore, our state universities confer 5,771 film related degrees each year, providing us with a strong workforce that often must leave our state in search of gainful employment.

I hope for your support and please contact me with any questions.

Sincerely,

Linda Garrou

Senator Linda Garrou

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, July 29, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1625	Simplify Taxation of Certain HOA Property.	Representative Justice Representative McComas Representative Hughes
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12:05 p.m.** on **July 27, 2009.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, July 29, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
HB 1625	Simplify Taxation of Certain HOA Property	Representative Justice Representative McComas Representative Hughes
SB 1007	Amend Home Inspector Licensure Laws	Senator Hoyle

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, July 29, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, July 29, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Goforth, Starnes, Stewart, and Wilkins, Vice Chairs; Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Floyd, Frye, Holloway, McGee, Mills, Rapp, Samuelson, Tarleton, and Warren. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

HB 1625 - A BILL TO BE ENTITLED AN ACT TO SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS' ASSOCIATIONS.
Sponsors: Representatives Justice, McComas, and Hughes
Representative Justice presented HB 1625 and explained that it would add the additional requirement that all property owned by a homeowner's association must be contained in the same taxing jurisdiction as the taxable real property owned by the members of the homeowner's association in order for the homeowner's association to not be assessed taxes on the property it owns. Discussion followed. Representative Tarleton moved for a favorable report for HB 1625 with a re-referral to the Committee on Finance. The motion passed.

SB 1007 - A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS UNDER THE North Carolina HOME INSPECTOR LICENSURE ACT. Sponsor: Senator Hoyle
Representative Carney moved to adopt the proposed House committee substitute, and it was adopted. Senator Hoyle presented the bill. He said that the licensure laws for home inspectors were enacted in 1994, and there have been few or no changes since then. The purpose of the bill was to address concerns and issues that have arisen over the 15 years. Senator Hoyle felt the bill strengthened the profession and did not understand the dissention of the Board. Representatives Tillis and Gibson sponsored the House companion bill HB 979, and Representative Tillis appeared before the Committee. He advised that he had met with stakeholders and with the Board of Home Licensure Inspectors to resolve differences. Neither side was totally in agreement but agreed that

the bill improved the existing law. Gerald Canipe, Chairman, North Carolina Home Inspector Licensure Board appeared before the Committee and supported the bill. He also supported the bill moving to the Committee on Finance provided that he be given the opportunity to work with the stakeholders to address two divisions as follows: (1) exemption for general contractors, architects and engineers; and (2) on the bill summary sheet – the issue of going into the general statute rather than in the rules process. He did indicate that a previous concern regarding the state building code had been worked out.

Bruce Rudd, represented the North Carolina Chapter of the American Society of Home Inspectors (NCASHI), and appeared before the Committee. He said they fully support the bill. It provides great benefit to the public. In addition to which it provided home inspectors very important safeguards, and addresses problems that homebuilders and realtors associations have had in the past. NCASHI has been involved in this for 15 years and has been involved in drafting these changes. He pointed out that issue (1) in Mr. Canipe's presentation may or may not be true. In 14 years of experience, the Licensing Board has developed no evidence that there is harm or cause by general contractors. Concerning issue (2) in Mr. Canipe's presentation, NCASHI wants to be protected by the legislature to always have the right to put safety issues in their summary page.

Discussion followed. Representative Floyd moved for a favorable report to the proposed House committee substitute bill, unfavorable to Senate committee substitute bill #2 with a re-referral to the Committee on Finance. The motion passed.

The meeting adjourned at 1:40 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thom Moore	Fidelity Nat'l
Garry Walker	NCLHIA
Eric Coates	NCLHIA
Mel Black	
Gerald Canipe	NCHILB
Rebecca Lan	NCHICB
Marion Peeples	NCHILB
DARRYL M. WASHINGTON	NACHI
Tom Cooper	NACHI
Jim Stegall	U.C.P.S.
Kelly Lucas	NCHA
Stan	Home
Victoria Hawkins	Bank + Assoc

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Gallimore	NCBA
Kim Crouch	NCBA
Mike Mann	NCBAA
Andy Kanipe	Christian Touch
Pam Edwards	Christian Touch/BET
R— Ali	
Debbie Eller	Communities In Schools
Dylan Milhorne	Caldwell County
Kenley Triplett	Caldwell County
Jessica Mangum	Caldwell County
	Caldwell County

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anita Wiesiewicz	UNC GA
Anna Killian	Caldwell Co. Chamber of Commerce
Erin Schwettzely	UNC GA
Melissa Eastman	Caldwell Co Chamber of Commerce
Deborah Ashley	Caldwell Co. Chamber of Commerce
Ian Ashley	" guest
Lauren Ashley	" guest
Allie Eaves	" guest
Jennelle Brace	Caldwell County guest
Dale Earley	Caldwell-County guest
Jessica Shenard	Communities in Schools of Caldwell Co.

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Ferguson	NC - InterNACHI / Lic. Home Inspector 355 Timberlands Dr Louisburg, NC 27549
Andrew Cagle	DLC + Assoc
LC [illegible]	DLC & ASSOC
Lauren Whaley	NC Credit Union League
Sara Nerison	NC Dept of Commerce
Henry Jones	Attorney - Raleigh
Bruce Rudd	NC-ASHI
Rick Zechini	NC Assoc of Realtors
Jessi Hayes	NC HBA
Lisa Martin	NC HBA
Cady Thomas	NC Assn of REALTORS
Tim Auld	NCBI

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Derek Dooley	Caldwell county
JakobBeach	Caldwell County
Miguel Jimenez	Caldwell County
Lucas Perley	Caldwell County
Caitlin Hendrix	Caldwell County
Kayla Hicks	caldwell county

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship July 29, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jaylan Horton	Caldwell County Guest
Cierra Coffey	Caldwell County Guest
Adasha Pearson	Caldwell County Guest
Sam Malicoat	Caldwell County Guest
Gabrielle Hodges	caldwell county Guest
Caden Hayler	Caldwell county Guest

Rm, 1228
LT 06

HOUSE PAGES

NAME OF COMMITTEE Commerce Small Business and Entrepreneurship DATE 7-29-09

1. Name: Melinda Ringel
   County: Cumberland
   Sponsor: Glazier
2. Name: JB Mitchell
   County: Wake
   Sponsor: Sandra-Spaulding Hughs
3. Name: Gabrielle Marshall
   County: Davidson
   Sponsor: Dockham
4. Name: Emily Bodager
   County: Durham
   Sponsor: Luebke
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: Young Bae
2. Name: James Worth
3. Name: Frank Prevo
4. Name:

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1625 A BILL TO BE ENTITLED AN ACT TO SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS' ASSOCIATIONS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1625:
Simplify Taxation of Certain HOA Property

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 22, 2009
Introduced by:	Reps. Justice, McComas, Hughes	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1625 would add the additional requirement that all property owned by a nonprofit homeowners' association (HOA) must be contained in the same taxing jurisdiction as the taxable real property owned by the members of the HOA in order for the HOA to not be assessed taxes on the property it owns.***

CURRENT LAW: G.S. 105.277.8 provides that the value of real and personal property owned by a nonprofit HOA must be included in the appraisals of property owned by members of the HOA and is not assessed against the HOA if all of the following requirements are met:

- All property owned by the HOA is held for the use, benefit, and enjoyment of all members of the HOA equally.
- Each member of the HOA has an irrevocable right to use and enjoy all the property owned by the HOA subject to the rules, regulations or bylaws of the HOA.
- Each irrevocable right to use and enjoy all the property owned by the HOA is appurtenant to taxable real property owned by a member of the HOA.

BILL ANALYSIS: House Bill 1625 would add an additional requirement that must be met before an HOA would not be assessed taxes on property owned by the HOA. In addition to the requirements above, all property owned by the HOA must be contained entirely within the same taxing jurisdiction as the taxable real property owned by members of the HOA to which the property is appurtenant.

EFFECTIVE DATE: The bill would become effective for taxes imposed for taxable years beginning on or after July 1, 2009.

H1625-SMRQ-122(e1) v1

HOUSE BILL 1625

Short Title:	Simplify Taxation of Certain HOA Property.	(Public)
Sponsors:	Representatives Justice, McComas, and Hughes (Primary Sponsors).	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS' ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.8(a) is amended by adding a new subdivision to read:

"**§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~if all the following requirements are met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

(4) All property owned by the association is contained entirely within the same taxing jurisdictions as is the taxable real property owned by the members of the association to which it is appurtenant.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 1007 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill No. 2 and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1007*
Judiciary II Committee Substitute Adopted 5/11/09
Finance Committee Substitute Adopted 6/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1007-PCS35374-ROf-76

Short Title: Amend Home Inspector Licensure Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

PART I. CONTINUING EDUCATION REQUIREMENTS

SECTION 1.1. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be ~~more~~ less than 12 credit ~~hours.~~ hours and no more than 20 hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 1.2. The North Carolina Home Inspector Licensure Board has the authority under G.S. 143-151.49(a)(12) and G.S. 143-151.55(a) to establish continuing education requirements as a condition of licensure renewal. Under that authority, the Board must require home inspectors and associate home inspectors licensed on or before September 30, 2011, to complete a continuing education program that focuses on inspection techniques and reporting requirements. The program must consist of 48 hours of instruction, composed of three separate 16-hour segments. A separate segment must be offered each renewal period. A licensee must complete one segment of the program for each of the three license renewal periods beginning with the license renewal period that starts on October 1, 2011. A licensee must complete the three-year program by October 1, 2014. Completion of each program segment satisfies the continuing education requirements under G.S. 143-151.64 for the renewal period in which it is completed. The Board may not allow continuing education credit for an unapproved course under G.S. 143-151.64(c) to be substituted for the continuing education requirements of this section.

SECTION 1.3. This Part becomes effective October 1, 2009.

PART II. LICENSURE REQUIREMENTS

SECTION 2.1. G.S. 143-151.49 reads as rewritten:

"**§ 143-151.49. Powers and responsibilities of Board.**

(a) General. – The Board has the power to do all of the following:

(1) ~~Determine~~ Examine and determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

(3) Issue, renew, deny, revoke, and suspend licenses under this Article.

(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish fees as allowed by this Article.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(11) Request and receive the assistance of State educational institutions or other State agencies.

(11a) Establish education requirements for licensure.

(12) Establish continuing education requirements for persons licensed under this Article.

(13) Adopt rules necessary to implement this Article.

(b) ~~Exam.~~ Education Requirements. – ~~In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience.~~The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board."

SECTION 2.2. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) Licensure Eligibility. – To be eligible to be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

~~(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).~~

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its ~~equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.~~equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart a.~~ sub-subdivision a. of this subdivision.

c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision on or after October 1, 2011, must remain in good standing with the person's respective licensing board.

(b) License. – Upon compliance with the conditions of licensure under subsection (a) of this section, to be eligible to be licensed as a home inspector, an applicant must meet all of the insurance requirements of this subsection.

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

b. A bond in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board."

SECTION 2.3. G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 2.4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements provided in G.S. 143-151.58(b)."

SECTION 2.5. G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b)."

SECTION 2.6. This Part becomes effective October 1, 2011.

PART III. ASSOCIATE HOME INSPECTOR LICENSURE SUNSET

SECTION 3.1. The Board may not accept an application for licensure as an associate home inspector after April 1, 2011. The Board may not issue a license for an associate home inspector on or after October 1, 2011. The Board may not renew an associate home inspector license on or after October 1, 2013.

SECTION 3.2. Notwithstanding G.S. 143-151.51, as rewritten by Section 2.2 of this act, a person who holds a license as an associate home inspector on October 1, 2011, may satisfy the education program requirement for licensure as a home inspector by being engaged as a licensed associate home inspector for one year and completing 100 home inspections for compensation. A person licensed as a home inspector under this section must complete the continuing education requirements of Section 1.2 of this act. An associate home inspector may take one or more of the program segments required under Section 1.2 of this act while licensed as an associate home inspector.

SECTION 3.3. G.S. 143-151.45(1), 143-151.52, 143-151.58(c), and 143-151.61 are repealed.

SECTION 3.4. G.S. 143-151.50 reads as rewritten:

"§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home ~~inspector or a licensed associate home inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 3.5. G.S. 143-151.55(d), as amended by Section 2.3 of this act, reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the insurance requirements provided in G.S. 143-151.51(b). ~~The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 3.6. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
~~Application for associate home inspector~~	~~15.00~~
Home inspector examination	75.00
Issuance of home inspector license	150.00
~~Issuance of associate home inspector license~~	~~100.00~~
Late renewal of home inspector license	25.00
~~Late renewal of associate home inspector license~~	~~15.00~~
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 3.7.(a) The catch line of G.S. 143-151.58 reads as rewritten:

"§ 143-151.58. Duties of licensed home ~~inspector or licensed associate home~~ inspector."

SECTION 3.7.(b) G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for

compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 3.8. Sections 3.3 through 3.7 of this Part become effective October 1, 2013. The remainder of this Part is effective when it becomes law.

PART IV. HOME INSPECTION REPORTS

SECTION 4.1. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear that does not prevent the system or component from functioning as intended. The summary page may describe the following:

(1) Any system or component that, based upon documented tangible evidence, either requires subsequent examination because the system or component appears not to function as intended or that requires further investigation by a specialist.

(2) Any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

(1) Determine the date of construction, renovation, and any subsequent installation or replacement of any system or component of the home.

(2) Determine the State Building Code in effect at the time of construction, renovation, and any subsequent installation or replacement of any system or component of the home.

(3) Conduct the home inspection using the building codes in effect at the time of the construction, renovation, and any subsequent installation or replacement of any system or component of the home.

In order to fully inform the client, if the licensee describes a deficiency as a violation of the State Building Code in the written report, then the report shall include the information described in subdivision (1) of this subsection and photocopies of the relevant provisions of the State Building Code used pursuant to subdivision (2) of this subsection to determine any violation stated in the report. The Board may adopt rules that are more restrictive on the use of the State Building Code by home inspectors."

SECTION 4.2. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 4.3. This Part becomes effective October 1, 2009.

PART V. OTHER LICENSURE CHANGES

SECTION 5.1. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 5.2. G.S. 143-151.55(b) and (c) read as rewritten:

"(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~ one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board."

SECTION 5.3. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 5.4. Sections 5.1 and 5.2 of this Part become effective October 1, 2009. The remainder of this Part is effective when it becomes law.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 1007:
Amend Home Inspector Licensure Laws

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	July 28, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Third Edition S1007-CSROf-76		

SUMMARY: ***The proposed committee substitute to Senate Bill 1007 increases the total number of continuing education requirements of licensed home inspectors, requires licensed home inspectors to complete an education program focused on inspection technique and reporting requirements, authorizes the Home Inspector Licensure Board to establish an education program to replace the associate home inspector license, requires licensed home inspectors to maintain certain insurance requirements, and requires licensed home inspectors to include certain information in home inspection reports.***

[As introduced, this bill was identical to H979, as introduced by Reps. Gibson, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

BILL ANALYSIS: The proposed committee substitute to Senate Bill 1007 makes the following changes to the licensure requirements for home inspectors:

Part I. Continuing Education Requirements – effective October 1, 2009:

Section 1.1: Increases the total amount of continuing education hours the Board may require of licensees each year. The Board may require no less than 12 credit hours, and no more than 20 credit hours.

Section 1.2: Requires all home inspectors and associate home inspectors licensed before September 30, 2011 to complete a continuing education program focused on inspection techniques and reporting requirements. The program will consist of 3 segments of 16 hours for a total of 48 hours of instruction. A licensee may complete one segment of instruction each year over a three year period, beginning on October 1, 2011. A licensee must complete the three-year program by October 1, 2014. Completion of the technique and reporting requirement instruction can be used to fulfill the general continuing education requirement.

Part II. Licensure Requirements – effective October 1, 2011:

Section 2.1: Authorizes the Board to establish an education program required for licensure. The education program may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, and peer review.

Section 2.2: Amends the requirements for licensure in the following ways:

- Licensees must complete an education program approved by the Board. The education program must be completed within three years of the date of the application for licensure.
- General contractors, architects, and professional engineers that may be licensed as a home inspector without completing the education program must be licensed for at least six months in their respective fields, and those qualifying under this provision on or after October 1, 2011, must maintain good standing with their respective licensing Board.

- Licensees must maintain the following insurance requirements:
  1. General liability insurance of $250,000.
  2. Either minimum net assets in an amount set by the Board of not less than $5,000 and not more than $10,000, a bond in an amount set by the Board of not less than $5,000 and not more than $10,000, or errors and omission insurance of $250,000.

Section 2.3: Provides that a home inspector license shall lapse if the licensee fails to maintain the above insurance requirements.

Section 2.4: Provides that the Board may deny or refuse to renew a license if a person fails to maintain the above insurance requirements.

Section 2.5: Provides it is a duty of all licensed home inspectors to maintain the above insurance requirements.

Part III. Associate Home Inspector Licensure Sunset – substantive provisions effective when the bill becomes law.

Section 3.1: Provides that the Board may not accept applications for associate home inspector licensees after April 1, 2011, and the Board may not renew an associate home inspector licenses after October 1, 2013.

Section 3.2: Provides that an individual that is licensed as an associate home inspector on October 1, 2011 may satisfy the education program requirement by being engaged as an associate home inspector for 1 year, completing 100 home inspections for compensation, and completing the inspection technique and reporting requirement instruction program provided in Section 1.2 of the bill.

Sections 3.3, 3.4, 3.5, 3.6, and 3.7: Makes conforming changes to remove references to "associate home inspectors." These conforming changes are effective October 1, 2013.

Part IV. Home Inspection Reports – effective October 1, 2009:

Section 4.1: Requires a summary page for inspection reports for a prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended allowing for normal wear and tear that does not affect the function of the system or component. The summary may describe any system or component that poses a safety concern, or any system or component that requires subsequent examination because it appears not to function as intended or requires further investigation by a specialist. Also requires a licensee that includes a deficiency in a written report that is stated as a violation of the State Building Code to determine the construction date of the home and the building codes in effect at that time, and to conduct the inspection using the building codes in effect at the time of the construction of the home. If the licensee makes reference to a violation of the building code, the report must contain information about the construction, renovation and any subsequent installation or replacement of a system or component. The report must also include a photocopy of the relevant provisions of the building code upon which the violation is based. The Board may adopt more restrictive rules regarding use of the State Building Code.

Part V. Other License Changes – effective October 1, 2009:

Section 5.1: Requires licensees to report criminal convictions and discipline by other occupational licensing boards to the Board within 60 days of the conviction or disciplinary action.

Section 5.2: Provides that the Board may not renew a license that expired more than 5 years prior to the application for renewal. Provides that individuals who seek to change a license from inactive status to active status must complete the continuing education requirements the individual would have been

required to take if the license were not inactive. However, the total number of continuing education classes required may not exceed 24 credit hours.

Section 5.3: Provides that an individual who fails to pass the licensure exam must wait at least 180 before retaking the exam.

Part VI. Effective Date. Except as otherwise provided, the act becomes effective when it becomes law.

Heather Fennell, counsel to Senate Finance, substantially contributed to this summary.

S1007-SMRO-152(CSROf-76) v1

NORTH CAROLINA
HOME INSPECTOR LICENSURE BOARD

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Date: 7/28/2009

Subject: SB 1007-NCHILB Special Board Meeting, 7/27/2009

The North Carolina Home Inspector Licensure Board convened a special meeting on July 27, 2009 to update the Board Members on changes to SB1007 as a result of three meetings with the stakeholders on July 13, 15, and 23, 2009. These meetings were requested by Rep. Margaret Dickson due to opposition to SB1007 expressed by the Board. Rep. Thom Tillis chaired the last meeting on July 23, 2009. Over the course of these meetings several significant drafting changes were agreed to as a result of the Board's expressed concerns. (See Addendum.)

The purpose of yesterday's special Board meeting was to determine if the Board's previous position in opposition to SB1007 should remain the same, remain with exceptions, or change completely, in light of the drafting changes agreed to during the meetings of July 13, 15, and 23.

Seven of the eight Board members were in telephonic attendance, along with Rebecca Lem, staff attorney to the Board, and the Board staff. Rick Zecchini representing NCAR and Lisa Martin representing the Home Builders Association were also present for most of the teleconference. Mr. Ted Triebel provided a summary of the past meetings with the SB1007 proponents.

During the meeting, and following significant discussion, the Board voted to pass three motions which update the Board's position concerning three specific provisions of SB1007.

In summary, after consideration of the changes to SB1007 agreed upon as of July 23, 2009, the Board supports SB1007 only upon condition that the following two changes are made:

(1) That licensed general contractors, architects, and engineers be required to take up to 40 hours of pre-licensing education in order to qualify for a home inspector's license, as the Board strongly feels that it is in the public's interest for all home inspectors to have a minimum amount of home-inspection specific education; and

(2) That the subsection of SB1007 specifying the requirements for the Home Inspection Summary Page be stricken, as such technical requirements are appropriately left to rules rather than statute.

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The following describe the three motions passed during the July 27, 2009 Special Meeting of the Board:

> **Motion #1. Motion for the Board to support SB1007, if SB1007 were modified so that licensed General Contractors, Architects, and Engineers were required to take up to 40 hours of Board-approved pre-licensing education in order to qualify for a Home Inspectors License.**

It is the Board's position that it is in the public's interest that all home inspectors have some education and instruction specific to performing the technical aspects (electrical, plumbing, heating/cooling/ventilation) of home inspections and writing home inspection reports in accordance with the Standards of Practice. Mr. Triebel also pointed out that Board representatives have several offered compromises in past meetings of reducing the pre-licensing education requirement for General Contractors from 200 to 120 to 48 to 40 hours which were all dismissed by the North Carolina Home Builders Association.

The Board passed this motion with five members voting in favor of the motion, one voting against it, one absent, and one member abstaining on the basis that he is a State employee with DOI.

> **Motion #2. Motion that the Board maintain its position that SB1007 Section 4.1 regarding the Summary Page should be removed from SB1007. The language as written is considerably better, however it is not sufficient and should remain in the Rules and not codified in the General Statutes.**

The SB1007 proponents have modified this section of SB1007 to address some of the Board's specific drafting concerns. However, the Board maintains its position that this portion of SB1007 should be removed from the bill because such technical requirements are most appropriately left to Board rules rather than statute. If left as a Rule the Board can make adjustments quickly through the Administrative Rules Process if unintended consequences develop following implementation. The Board passed this motion with four members voting in favor of the motion, two voting against it, one absent, and one member abstaining on the basis that he is a State employee with DOI.

> **Motion #3. Motion to withdraw the Board's opposition to SB1007 Section 4.1 (adding subsection (a2) to G.S. 143-151.58) regarding citation of the State Building Code in Home Inspection Reports.**

After consideration of the changes agreed upon by the proponents to SB1007 Section 4.1 (adding subsection (a2) to G.S. 143-151.58) regarding citation of the State Building Code in Home Inspection Reports, the Board has withdrawn its opposition to this provision's inclusion in SB1007. In

this vote, five members voted to support the motion, two members were absent, and one member abstained on the basis that he is a State employee with DOI.

In closing, as noted in my last letter, there is no emergency that necessitates immediate passage of this bill, and the Board urges legislators to exercise prudence and caution to ensure that all aspects of SB1007 have been properly analyzed and addressed.

Gerald W. Canipe

Gerald W. Canipe
Chairman,
North Carolina Home Inspector Licensure Board

Addendum:

Modifications to SB1007 Agreed Upon by SB1007 Stakeholders (As of July 23, 2009)

Several modifications to SB1007 were agreed upon by the SB1007 following the four meetings with Board representatives. These modifications are to Sections 2.2 and 4.1 of SB1007, and are as follows:

From Section 2.2 of the SB1007 on page 3:

(b) License. – Upon compliance with the conditions of licensure under subsection (a) of this section, to be eligible to be licensed as a home inspector, an applicant must meet all of the insurance requirements of this subsection.

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

b. A bond in an amount determined by the Board, which amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board. Section.

(c) Be licensed for at least six months as a general contractor under 4 Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision on or after October 1, 2011, must remain in good standing with the person's respective licensing board.

From Section 4.1 of the bill on page 5:

(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in

this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear that does not prevent the system or component from functioning as intended. The summary page may describe the following:

(1) Any system or component that, based upon documented tangible evidence, either requires subsequent examination because the system or component appears not to function as intended or that requires further investigation by a specialist.

(2) Any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

(1) Determine the date of construction, renovation and any subsequent installation or replacement of any system or component of the home.

(2) Determine the State Building Code in effect at the time of construction, renovation and any subsequent installation or replacement of any system or component of the home.

(3) Conduct the home inspection using the applicable building codes in effect at the time of the construction, renovation and any subsequent installation or replacement of any system or component of the home.

In order to fully inform the client, if the licensee describes a deficiency as a violation of the State Building Code in the written report then the report shall include the information described in subdivision (1) of this subsection and photocopies of the relevant provisions of the State Building Codes used pursuant to subdivision (2) of this subsection to determine any violation stated in the report. The Board may adopt rules that are more restrictive on the use of the State Building Code by home inspectors.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 1007*
Judiciary II Committee Substitute Adopted 5/11/09
Finance Committee Substitute Adopted 6/4/09

Short Title: Amend Home Inspector Licensure Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

PART I. CONTINUING EDUCATION REQUIREMENTS

SECTION 1.1. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be ~~more~~ less than 12 credit ~~hours.~~ hours and no more than 20 hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 1.2. The North Carolina Home Inspector Licensure Board has the authority under G.S. 143-151.49(a)(12) and G.S. 143-151.55(a) to establish continuing education requirements as a condition of licensure renewal. Under that authority, the Board must require home inspectors and associate home inspectors licensed on or before September 30, 2011, to complete a continuing education program that focuses on inspection techniques and reporting requirements. The program must consist of 48 hours of instruction, composed of three separate 16-hour segments. A separate segment must be offered each renewal period. A licensee must complete one segment of the program for each of the three license renewal periods beginning with the license renewal period that starts on October 1, 2011. A licensee must complete the three-year program by October 1, 2014. Completion of each program segment satisfies the continuing education requirements under G.S. 143-151.64 for the renewal period in which it is completed. The Board may not allow continuing education credit for an unapproved course under G.S. 143-151.64(c) to be substituted for the continuing education requirements of this section.

SECTION 1.3. This Part becomes effective October 1, 2009.

PART II. LICENSURE REQUIREMENTS

SECTION 2.1. G.S. 143-151.49 reads as rewritten:

"**§ 143-151.49. Powers and responsibilities of Board.**

(a) General. – The Board has the power to do all of the following:

(1) ~~Determine~~ Examine and determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.
(3) Issue, renew, deny, revoke, and suspend licenses under this Article.
(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
(9) Establish fees as allowed by this Article.
(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
(11) Request and receive the assistance of State educational institutions or other State agencies.
(11a) Establish education requirements for licensure.
(12) Establish continuing education requirements for persons licensed under this Article.
(13) Adopt rules necessary to implement this Article.

(b) ~~Exam.~~ Education Requirements. ~~In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience.~~ The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board."

SECTION 2.2. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) Licensure Eligibility. – To be eligible to be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
~~(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).~~
(4) Pay the applicable fees.
(5) Meet one of the following three conditions:
a. Have a high school diploma or its ~~equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.~~ equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.
b. Have education and experience the Board considers to be equivalent to that required by ~~subpart a.~~ sub-subdivision a of this subdivision.
c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer

under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision must remain in good standing with the person's respective licensing board.

(b) License. – The Board must issue a license to an applicant that meets the conditions of licensure under subsection (a) of this section and all of the insurance requirements of this subsection.

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000).

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000).

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board."

SECTION 2.3. G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 2.4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements provided in G.S. 143-151.58(b)."

SECTION 2.5. G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b)."

SECTION 2.6. This Part becomes effective October 1, 2011.

PART III. ASSOCIATE HOME INSPECTOR LICENSURE SUNSET

SECTION 3.1. The Board may not accept an application for licensure as an associate home inspector after April 1, 2011. The Board may not issue a license for an associate home inspector on or after October 1, 2011. The Board may not renew an associate home inspector license on or after October 1, 2013.

SECTION 3.2. Notwithstanding G.S. 143-151.51, as rewritten by Section 2.2 of this act, a person who holds a license as an associate home inspector on October 1, 2011, may satisfy the education program requirement for licensure as a home inspector by being engaged as a licensed associate home inspector for one year and completing 100 home inspections for compensation. A person licensed as a home inspector under this section must complete the continuing education requirements of Section 1.2 of this act. An associate home inspector may

take one or more of the program segments required under Section 1.2 of this act while licensed as an associate home inspector.

SECTION 3.3. G.S. 143-151.45(1), 143-151.52, 143-151.58(c), and 143-151.61 are repealed.

SECTION 3.4. G.S. 143-151.50 reads as rewritten:

"**§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".**

(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home ~~inspector or a licensed associate home inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 3.5. G.S. 143-151.55(d), as amended by Section 2.3 of this act, reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the insurance requirements provided in G.S. 143-151.51(b). ~~The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 3.6. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
~~Application for associate home inspector~~	~~15.00~~
Home inspector examination	75.00
Issuance of home inspector license	150.00
~~Issuance of associate home inspector license~~	~~100.00~~
Late renewal of home inspector license	25.00
~~Late renewal of associate home inspector license~~	~~15.00~~
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 3.7.(a) The catch line of G.S. 143-151.58 reads as rewritten:

"**§ 143-151.58. Duties of licensed home ~~inspector or licensed associate home~~ inspector.**"

SECTION 3.7.(b) G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 3.8. Sections 3.3 through 3.7 of this Part become effective October 1, 2013. The remainder of this Part is effective when it becomes law.

PART IV. HOME INSPECTION REPORTS

SECTION 4.1. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear. The summary page may describe the following:

(1) Any system or component that, based upon documented visible evidence, either requires subsequent examination because the system or component appears not to function as intended or that requires further investigation by a specialist.

(2) Any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

(1) Determine the construction date or dates of the home.

(2) Determine the State and municipal building codes in effect at the time of construction.

(3) Conduct the home inspection using the building codes in effect at the time of the construction."

SECTION 4.2. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 4.3. This Part becomes effective October 1, 2009.

PART V. OTHER LICENSURE CHANGES

SECTION 5.1. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 5.2. G.S. 143-151.55(b) and (c) read as rewritten:

"(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~ one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board."

SECTION 5.3. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 5.4. Sections 5.1 and 5.2 of this Part become effective October 1, 2009. The remainder of this Part is effective when it becomes law.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, August 5, 2009
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 982	Small Business Assistance Fund.	Senator Jenkins

Respectfully,
Representative Dickson, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:00 noon on **August 04, 2009**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Brenda Lee (Committee Assistant)

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Wednesday, August 5, 2009
1:00 P.M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 982	Small Business Assistance Fund	Senator Jenkins

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Wednesday, August 5, 2009
1:00 P.M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Wednesday, August 5, 2009, in Room 1228, Legislative Building at 1:00 p.m. The following members were present: Representative Dickson, Chair; Representatives Carney, Starnes, Wilkins, Vice Chairs; Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Cole, England, Floyd, Frye, Harrell, Holloway, Mills, Pierce, Rapp, Tarleton, and Warren. Representatives Goforth, Farmer-Butterfield, and Samuelson were in other Committee meetings. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 982 - A BILL TO BE ENTITLED AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER. Sponsor: Senator Jenkins

Representative Tarleton moved to adopt the proposed House committee substitute, and it was adopted. Lieutenant Governor Walton Dalton presented the bill. He thanked Representatives Crawford, Owens, Adams and others who co-sponsored the bill in the House and thanked Senator Jenkins, the primary sponsor of SB 982. He said the purpose of the bill was to correct a special provision that was in the budget. The budget creates the Small Business Assistance Fund, and the provision had an error in it, and this is more comprehensive. The Lieutenant Governor shared his experiences of conducting listening tours of small businesses across the state, and most was in conjunction with the National Federal of Independent Business (NFIB), and also the North Carolina Chamber. With the economy as dire as it is, he realized that big business is leaning on small business. Credit is hard to get, payments are delayed, and this is crushing small, good viable businesses that have been established for many years. With the help of Senator Jenkins and members of the House, a Small Business Assistance Fund was proposed. He said this had been done before for natural disasters to loan small businesses money to get back on their feet. This is an economic disaster. Other states have a revolving fund for small businesses like this. In the budget, there is a small amount of money for this, but it sends a huge message in a time that money is tight. It is a very small amount and provides

loans, but the provision does not allow for loan guarantees. The Senate and House bills allow for loan guarantees. He said we can coordinate with the Small Business Administration and make this money go further through those guarantees which is one of the things this provision would do. Another part of the bill that is not in the special provision is that if a loan is made, none of that money should ever go for executive compensation. This is to help the business get capital to keep people employed and not go into the pockets of the owners. Another thing in the bill is a Small Business Advisory Commission. Small business owners do not feel anyone is listening to them. The Commission, funded by an appropriation in the budget bill, would be an advisory committee that would be advisory to the NC Department of Commerce and would also report to Governmental Operations. Thus, small business would know they have a voice and that they have "a place at the table." The leadership of both the House and Senate acknowledge that the provision is wrong. It says loans can be made at **prime plus 8%** which is obviously an error. He asked Committee members to support the bill to get this corrected before the end of the session. Gregg Thompson, State Director of the National Federation of Independent Business appeared before the Committee. He also shared information obtained from small business owners from the listening tours across the state and supports the bill. Discussion followed. Representative Floyd moved for a favorable report to the proposed House committee substitute, unfavorable to the Senate committee substitute with a re-referral to the Committee on Finance. The motion passed.

The meeting adjourned at 1:30 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 5, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	NC Chamber
Gregg Thayer	NFIB
Ericka A. Jones	Robeson Community College P.O. Box 1420 Lumberton, NC 28358
Anne Kokenda	CNN
Jack Betts	Charlotte Observer

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 5, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NCHBA

Rm. 1228
LT. 08

HOUSE PAGES

NAME OF COMMITTEE ...MERCE SMALL BUSINESS AND ENTREPRENEURSHIP DATE 8-5-09

1. Name: Jallian Abarca

County: Franklin

Sponsor: Lucy Hilen

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: FRED HINES
2. Name: CARLTON ADAMS
3. Name: FRANK PREVI
4. Name: _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 982 A BILL TO BE ENTITLED AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 982*
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S982-PCS15328-RO-81

Short Title: Small Business Assistance Fund. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE DEPARTMENT OF COMMERCE WITH RELATED PROGRAMS COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

Whereas, North Carolina has historically provided assistance to small businesses after natural disasters; and

Whereas, North Carolina and the State's small businesses face an economic disaster of historic proportions; and

Whereas, unemployment approaches 15 percent in many North Carolina counties and may ultimately exceed 10 percent for the entire State; and

Whereas, small business accounts for more than half of all North Carolina jobs and more than 98 percent of its businesses; and

Whereas, small business has been especially hard hit by the global downturn and resulting shortage of available credit; and

Whereas, this shortage of credit has caused businesses to be closed in record numbers across North Carolina and rendered thousands more North Carolinians jobless every month; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. If Senate Bill 202, 2009 Regular Session, becomes law, then G.S. 143B-437.89, as enacted by Section 14.3(b) of Senate Bill 202, reads as rewritten:

"Subpart B. Small Business Assistance Fund.

"**§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.**

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the ~~Department.~~Department through the Small Business and Technology Development Center or any other entity as selected by the Secretary of Commerce. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. The Department may approve the payment of costs and administrative fees not to exceed five percent (5%) for the administration of the Fund. Interest earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds appropriated by the State, repayments of principal of and interest on loans, fees, and other

amounts received by the Department with respect to financial assistance provided by the Department, and any other public or private funds made available to the Fund.

(b) Department Authority; Loan ~~Terms.~~Terms; Commission. – The Department may approve ~~for~~ disbursements of moneys in the Fund to small businesses in accordance with the provisions of this section. The ~~Department~~ Department, supported by the advice and counsel of the Small Business Advisory Commission (Commission), the Small Business and Technology Development Center, or any other professional entity as selected by the Secretary of Commerce, shall develop criteria, technical specifications, policies, and procedures to be used in determining whether the conditions of this section are satisfied and whether the activities described in the application are otherwise consistent with the purposes of this section. The Commission shall comprise the Secretary of Commerce or the Secretary's designee; the President of the Community College System or the President's designee; a representative of The University of North Carolina General Administration; three members appointed by the Governor; three members appointed by the Lieutenant Governor; three members appointed by the President Pro Tempore of the Senate; and three members appointed by the Speaker of the House of Representatives. In addition to its advisory role to the Department as stated above, the Commission shall receive comments regarding the needs and concerns of small businesses as they relate to matters of State. The Commission shall report to the Joint Legislative Commission on Governmental Operations annually. The cost of the Commission shall be taken from the administrative fees collected pursuant to subsection (a) of this section. As used in this section, "moneys" means a disbursement from the Fund in the form of a loan, or loan guarantee, and "small business" means a business whose annual receipts and number of full-time employees, combined with the annual receipts and full-time employees of all related persons, did not exceed one million dollars ($1,000,000) or 100 full-time employees. No more than twenty percent (20%) of the Fund may be loaned to businesses in Article 3J Tier 3 counties. The remainder of the Fund is reserved for businesses in Article 3J Tier 1 and Tier 2 counties. The main priority of the Fund shall be to protect existing jobs rather than to create new jobs. However, priority also may be given to loans or loan guarantees that will enhance the ability of otherwise qualifying small businesses to enter into federal stimulus contracts. Priority also may be given to requests for loans or loan guarantees made by otherwise qualifying historically underutilized business. A small business may apply for a loan ~~for:~~

~~(1) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within five years at the prime rate plus four percent (4%).~~

~~(2) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 10 years at the prime rate plus six percent (6%).~~

~~(3) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 15 years at the prime rate plus eight percent (8%).~~for any legitimate business purposes, but a loan or loan guarantee from the Small Business Assistance Fund may not be used to enhance executive pay, provide bonuses, or consolidate operations in a manner that reduces the existing workforce. Existing small businesses applying for assistance from the Fund must have a proven record of success and must demonstrate that but for the recent economic downturn, the business would not be in need of capital assistance.

(c) Eligible Purposes. – In order to make the most expeditious use of limited resources, preference shall be given to loan guarantees for the first two years of the Fund. Thereafter, ~~Moneys~~ moneys in the Fund shall be used for any of the following eligible purposes:

(1) To provide emergency bridge loans where clear and apparent ability to repay has been established but credit remains unavailable.

(2) To lend for other purposes related to small business job preservation as approved or recommended by the Department.

(3) To guarantee commercial loans.

(d) Application. – Any small business may apply for moneys from the Fund by submitting an application to the ~~Department.~~Department through its designated loan administration resource. The application shall list each of the following:

(1) The proposed activities for which the moneys are to be used.

(2) The amount of moneys requested for these activities.

(3) Projections of the dollar amount of private investment that is expected to occur as a direct result of the proposed activities.

(4) An explanation of the nature of the private investment that will result from the proposed activities.

(5) A requirement for any reports, disclosures, or information required by this section or necessary for the Department to fulfill its duties under this section.

(6) The total compensation received for the previous year from the small business and all related persons for each of the five highest-compensated employees of the small business.

(7) Any additional or supplemental information required by the Department upon written request.

(e) Determination. – The Department or its designee shall review an application submitted by a small business, determine whether the activities listed in the application are activities that are eligible for moneys from the Fund, and determine which applicants are selected to receive moneys from the Fund. A small business whose application is denied may file a new or amended application.

(f) Limitation. – A small business that is selected may not receive moneys from the Fund pursuant to this section with an aggregate total of more than ~~thirty-five thousand dollars ($35,000).~~fifty thousand dollars ($50,000). A small business selected for a loan guarantee may not receive a guarantee of more than one hundred thousand dollars ($100,000).

(g) Disbursements of Moneys. – The Department or its designee shall not disburse moneys for any loans until the small business has confirmed a method of repayment for the loan. The terms for repayment established for a given loan shall apply through the period of that loan. A small business that has been selected to receive moneys shall use the full amount of the moneys for the activities that were approved pursuant to subsection (b) of this section. Moneys are deemed used if the small business is legally committed to spend the moneys on the approved activities. For purposes of this section, approved activities do not include an increase in the total compensation of any employee identified in the application under subdivision (d)(6) of this section. A small business shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Fund. A small business that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or credited to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund exists.

(h) Cost Report. – After activities financed in whole or in part pursuant to this section have been completed, the small business shall report the actual cost of the project to the Department. If the actual costs of the activities exceed the projected cost upon which the moneys were based, the small business may submit an application to the Department for additional moneys for the difference. If the actual costs of the activities are less than the projected cost, the small business shall arrange to pay the difference to the Fund according to terms set by the Department.

(i) Inspection. – Inspection of a project for which moneys have been awarded may be performed by personnel of the ~~Department.~~Department or its designee. No person may be approved to perform inspections who is an officer or employee of the small business to which

the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the activities for which the moneys were disbursed.

(j) Administration. – The Department may ~~adopt, modify, and repeal~~adopt rules establishing the procedures to be followed in the administration of this section and interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(k) Legislative Reports. – The Department shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of moneys authorized by this section, including a separate listing of the moneys disbursed to historically underutilized businesses. The report shall set forth for the preceding fiscal year itemized and total allocations from the Fund. The Department also shall prepare a summary report of all allocations made from the Fund for each fiscal year; the total funds received and allocations made; the total amount of moneys repaid to the Fund; and the total unallocated funds in the Fund.

Small businesses that have been selected to receive moneys from the Fund shall prepare and file a report that shall include the following information:

(1) The total amount of private funds that was committed and the amount that was invested in activities for which moneys from the Fund were made available during the preceding fiscal year.

(2) The total amount and character of moneys received from the Fund during the preceding fiscal year.

(3) The total amount of moneys repaid to the Fund during the preceding fiscal year.

(4) A description of how moneys from the Fund and funds from private investors were used during the preceding fiscal year.

(5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) ~~Administrative Expenses. The Department may use up to fifty thousand dollars ($50,000) of the funds in the Small Business Jobs Preservation and Emergency Assistance Fund for expenses related to the administration of the Fund.~~Nothing in this section shall be deemed a pledge of the faith and credit of the State. Any loan guarantees authorized by this section shall be limited to the funds available to the Fund as created by this section."

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

SENATE BILL 982:
Small Business Assistance Fund

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations	**Date:**	August 5, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition S982-CSRO-81		

SUMMARY: The PCS for Senate Bill 982 amends a Budget provision which establishes the Small Business Jobs Preservation and Emergency Assistance Fund in the Department of Commerce.

[As introduced, this bill was identical to H814, as introduced by Rep. Crawford, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations.]

CURRENT LAW: Section 14.3(b) of Senate Bill 202, the Appropriations Act of 2009, created the Small Business Jobs Preservation and Emergency Assistance Fund to be administered by the Department of Commerce. The Fund consists of State appropriations, repayments of principal and interest on loans, fees, and other amounts received by the Department, as well as other public and private funds made available to the Fund.

The Section authorized the Department to make loans to eligible small businesses on terms set in the statute. Moneys from the Fund could be used for:

- Emergency bridge loans where clear ability to repay has been established by credit remains unavailable.
- Other purposes related to small business job preservation as approved by the Department.

Under the section, the amount of a loan made to a small business would be limited to an aggregate total of no more than $35,000. The small business would be required to report on the costs of the project for which the loan was made to the Department and would be subject to inspections. The Department is authorized to establish procedures to administer the program by rules.

The Department would also be required to report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by September 1 of each year on the allocation of money authorized by the section. Also, small businesses that receive money from the Fund must report on the details of how the money was used.

The budget provision authorizes the Department to use up to $50,000 of the money in the Fund for administrative expenses.

BILL ANALYSIS:

The PCS for SB 982 makes several amendments to the Section contained in the Budget as follows:

- Allows the Department to use the Small Business and Technology Development Center or other selected entities to administer the Fund.
- Sets a 5% cap on administrative fees and expenses.

- Creates a Small Business Advisory Commission to assist the Department and receive comments from small businesses.
- Authorizes the Department to make loan guarantees to small businesses as well as loans.
- Provides that no more than 20% of the Fund can be loaned to Tier 3 counties.
- Removes the specific loan terms from the statute.
- Provides that the loans can be used for any legitimate business purpose but may not be used to enhance executive pay, provide bonuses or consolidate operations so as to reduce the existing workforce.
- Adds the guarantee of commercial loans as an eligible purpose for the Fund and provides that preference should be given to loan guarantees for the first two years of the Fund.
- Raises the loan cap from $35,000 to $50,000, and sets a $100,000 cap for loan guarantees.
- Specifically states that the loan guarantees are not to be deemed pledges of the faith and credit of the State, but are limited to the funds available to the Fund.
-

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

S982-SMRO-155(CSRO-81) v1

SENATE BILL 982*
Commerce Committee Substitute Adopted 5/12/09

Short Title: Small Business Assistance Fund. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

Whereas, North Carolina has historically provided assistance to small businesses after natural disasters; and

Whereas, North Carolina and the State's small businesses face an economic disaster of historic proportions; and

Whereas, unemployment approaches 15 percent in many North Carolina counties and may ultimately exceed 10 percent for the entire State; and

Whereas, small business accounts for more than half of all North Carolina jobs and more than 98 percent of its businesses; and

Whereas, small business has been especially hard hit by the global downturn and resulting shortage of available credit; and

Whereas, this shortage of credit has caused businesses to be closed in record numbers across North Carolina and rendered thousands more North Carolinians jobless every month; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 2I of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2I. ~~One~~ North Carolina Small Business ~~Program.~~Assistance.

"Subpart A. One North Carolina Small Business Program."

SECTION 2. Part 2I of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Small Business Assistance Fund.

"**§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.**

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the Department through the Small Business and Technology Development Center or any other entity as selected by the Secretary of Commerce. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds appropriated by the State, repayments of principal of and interest on loans, fees, and other amounts received by the Department with respect to financial assistance provided by the Department, and any other public or private funds made available to the Fund.

(b) Department Authority; Loan Terms; Commission. – The Department may approve for disbursements of moneys in the Fund to small businesses in accordance with the provisions of this section. The Department in conjunction with a Small Business Advisory Commission (Commission) supported by the advice and counsel of the Small Business and Technology Development Center of any other professional entity as selected by the Secretary of Commerce, shall develop criteria, technical specifications, policies, and procedures to be used in determining whether the conditions of this section apply. The Commission shall be comprised of the Secretary of Commerce or the Secretary's designee; the President of the Community College System or the President's designee; a representative of The University of North Carolina General Administration; three members appointed by the Governor; three members appointed by the Lieutenant Governor; three members appointed by the President Pro Tempore of the Senate; and three members appointed by the Speaker of the House of Representatives. In addition to administering the Small Business Assistance Fund, the Commission shall receive comments regarding the needs and concerns of small businesses as they relate to matters of State. The Commission shall report to the Joint Legislative Commission on Governmental Operations annually.

As used in this section, "moneys" means a disbursement from the Fund in the form of a loan, or loan guarantee, and "small business" means a business whose annual receipts and number of full-time employees, combined with the annual receipts and full-time employees of all related persons, did not exceed one million dollars ($1,000,000) or 100 full-time employees. No more than twenty percent (20%) of the Fund may be loaned to businesses in Article 3J Tier 3 counties. The remainder of the Fund is reserved for businesses in Article 3J Tier 1 and Tier 2 counties. The main priority of the Fund shall be to protect existing small business to enter into federal stimulus contracts. Priority also may be given to requests for loans or loan guarantees made by otherwise qualifying historically underutilized business. A small business may apply for a loan for: any legitimate business purposes, but may not be used to enhance executive pay, provide bonuses, or consolidate operations in a manner that reduces the existing workforce. Existing small businesses applying for assistance from the Fund must have a proven record of success and must demonstrate that but for the recent economic downturn, the business would not be in need of capital assistance.

(c) Eligible Purposes. – Moneys in the Fund shall be used for any of the following eligible purposes:

(1) To guarantee commercial loans.

(2) To provide emergency bridge loans where clear and apparent ability to repay has been established but credit remains unavailable.

(3) To lend for other purposes related to small business job preservation as approved or recommended by the Department.

(d) Application. – Any small business may apply for moneys from the Fund by submitting an application to the Department its designated loan administration resource. The application shall list each of the following:

(1) The proposed activities for which the moneys are to be used.

(2) The amount of moneys requested for these activities.

(3) Projections of the dollar amount of private investment that is expected to occur as a direct result of the proposed activities.

(4) An explanation of the nature of the private investment that will result from the proposed activities.

(5) A requirement for any reports, disclosures, or information required by this section or necessary for the Department to fulfill its duties under this section.

(6) The total compensation received for the previous year from the small business and all related persons for each of the five highest-compensated employees of the small business.

(7) Any additional or supplemental information required by the Department upon written request.

(e) Determination. – The Department or its designee shall review an application submitted by a small business, determine whether the activities listed in the application are activities that are eligible for moneys from the Fund, and determine which applicants are selected to receive moneys from the Fund. A small business whose application is denied may file a new or amended application.

(f) Limitation. – A small business that is selected for a loan may not receive moneys from the Fund pursuant to this section with an aggregate total of more than fifty thousand dollars ($50,000). A small business selected for a loan guarantee may not receive a guarantee for a loan of more than one hundred thousand dollars ($100,000).

(g) Disbursements of Moneys. – The Department or its designee shall not disburse moneys for any loans until the small business has confirmed a method of repayment for the loan. The terms for repayment established for a given loan shall apply through the period of that loan. A small business that has been selected to receive moneys shall use the full amount of the moneys for the activities that were approved pursuant to subsection (b) of this section. Moneys are deemed used if the small business is legally committed to spend the moneys on the approved activities. For purposes of this section, approved activities do not include an increase in the total compensation of any employee identified in the application under subdivision (6) of subsection (d) of this section. A small business shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Fund. A small business that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or credited to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund exists.

(h) Cost Report. – After activities financed in whole or in part pursuant to this section have been completed, the small business shall report the actual cost of the project to the Department. If the actual costs of the activities exceed the projected cost upon which the moneys were based, the small business may submit an application to the Department for additional moneys for the difference. If the actual costs of the activities are less than the projected cost, the small business shall arrange to pay the difference to the Fund according to terms set by the Department.

(i) Inspection. – Inspection of a project for which moneys have been awarded may be performed by personnel of the Department or its designee. No person may be approved to perform an inspection who is an officer or employee of the small business to which the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the activities for which the moneys were disbursed.

(j) Administration. – The Department or its designee may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(k) Legislative Reports. – The Department shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of moneys authorized by this section, including a separate listing of the moneys disbursed to historically underutilized businesses. The report shall set forth for the preceding fiscal year itemized and total allocations from the Fund. The Department shall also prepare a summary report of all allocations made from the Fund for each fiscal year: the total funds received and allocations made; the total amount of moneys repaid to the Fund; and the total unallocated funds in the Fund.

Small businesses that have been selected to receive moneys from the Fund shall prepare and file a report that shall include the following information:

(1) The total amount of private funds that was committed and the amount that was invested in activities for which moneys from the Fund were made available during the preceding fiscal year.

(2) The total amount and character of moneys received from the Fund during the preceding fiscal year.

(3) The total amount of moneys repaid to the Fund during the preceding fiscal year.

(4) A description of how moneys from the Fund and funds from private investors were used during the preceding fiscal year.

(5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities."

SECTION 3. This act becomes effective July 1, 2009.

Brenda Lee (Rep. Dickson)

From: Dianne Russell (House Legislative Assistants Director)
Sent: Thursday, August 06, 2009 1:36 PM
To: Ada Finch (Rep. Braxton); Anita Wilder (Rep. Michaux); Ann Faust (Rep. Alexander); Ann Jordan (Rep. Goforth); Ann Raeford (Rep. Earle); Barbara McMillan (Sen. Blue); Blinda Edwards (Rep. Wainwright); Brenda Lee (Rep. Dickson); Carin Savel (Rep. Glazier); Carol Bowers (Rep. Holliman); Caroline Stirling (Rep. Brisson); Carolyn Edwards (Rep. Bell); Dorothy McLean (Rep. Womble); Dot Crocker (House Rules); Emily King (Rep. Ty Harrell); Forrest Gilliam (Rep. Rapp); Gennie Thurlow (Rep. Hill); Gina Insko (Rep. Insko); Jane McMillan (Rep. Goodwin); Janice Mobley Bennett (Rep. Mobley); Jo Bobbitt (Rep. Sutton); Joyce Harris (Rep. Luebke); Judy Veorse (Rep. Underhill); Karon Hardy (Rep. Bryant); Katie Stanley (Rep. Yongue); Lavada Vitalis (Rep. Faison); Linda A. Johnson (Rep. Owens); Linda Laton (Rep. Cole); Linda Winstead (Rep. Jim Crawford); Lisa Brown (Rep. England); Lisa Ray (Rep. Hall); Lona Hallissy (Rep. Spear); Lynn Tennant (Rep. Fisher); Margie Penven (Rep. Ross); Martha Hoover (Rep. E. Warren); Mary Capps (Rep. Wray); Mary Lee Robinson (Rep. Jeffus); Melissa Lennon (Rep. Coates); Michelle Hall (Rep. Bordsen); Mildred Alston (Rep. Pierce); Nancy Brantley (Rep. Wilkins); Pam Evans (Rep. Williams); Pat Christmas (Rep. Parmon); Renee Weaver (Rep. Howard); Rosa Kelley (Rep. Cotham); Ruth Merkle (Rep. Farmer-Butterfield); Sally Gillis (Rep. Tucker); Sara Jane Lennard (Rep. Haire); Shara Graham (Rep. Lucy Allen); Sherrie Burnette (Rep. Earl Jones); Shirley Phillips (Rep. Tolson); Sue Osborne (Rep. Harrison); Susan Burleson (Rep. McLawhorn); Susan Doty (Rep. Weiss); Susan Whitehead (Rep. Tarleton); Susanna Davis (Rep. Gibson); Sylvia Hammons (Rep. Martin); Sylvia Nygard (Rep. Love); Tazra Mitchell (Rep. Carney); Thelma Utley (Rep. Marvin Lucas); Theresa Lopez (Rep. Ray Warren)
Cc: Jackie Hamby (House Legislative Assistants Office)
Subject: Schedule for Today

I just wanted to follow up with all of the committee clerks on the Speaker's announcement at the beginning of Session today. It appears that today will be a long day and the Speaker plans to recess Session several times today so that committee meetings can be called on short notice. Please make sure you are listening to the Session today or that you are in touch with your Member so you are aware if a meeting that your Member chairs is called. It is very important that all bills are reported out as soon as possible so they can be added to the calendar.

Please be available to clerk your meetings on very short notice today, Monday and Tuesday.

Thanks so much for everyone's very hard work--we are almost to the finish line!

Dianne Russell
Director of House Legislative Assistants
North Carolina House of Representatives
16 West Jones Street
Room 2225
Raleigh, NC 27601-1096
919-733-5977

AGENDA
HOUSE COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP COMMITTEE MEETING

Thursday, August 6, 2009
3:45 P. M.
Room 1228, Legislative Building

OPENING REMARKS

Representative Margaret H. Dickson, Chair

AGENDA ITEMS

Bill No.	Short Title	Sponsor(s)
SB 460	Commercial Dog Breeder Regulation	Senator Davis
SB 884	Smoking Prohibition Exemption	Senator Hartsell, Jr.

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON COMMERCE,
SMALL BUSINESS AND ENTREPRENEURSHIP

Thursday, August 6, 2009
3:50 P. M.
Room 1228, Legislative Building

The House Committee on Commerce, Small Business and Entrepreneurship met on Thursday, August 6, 2009, in Room 1228, Legislative Building at 3:50 p.m. The following members were present: Representative Dickson, Chair, Representatives Adams, Carney, Starnes, Stewart, Wilkins, Vice Chairs; Representatives Allen, Avila, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Gillespie, Harrell, Holloway, McGee, Mills, Owens, Pierce, Rapp, Samuelson, Steen, Tarleton, and Wray. Staff Counsel Karen Cochrane-Brown, Drupti Chauhan, and Brad Krehely were in attendance. A visitor registration list is attached and made part of these minutes.

The Chair called the meeting to order, welcomed visitors, and recognized the Committee Assistant, Staff, Pages, and Sergeants-at-Arms.

The Chair announced the following bills:

SB 884 – A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE TERM 'CIGAR BAR' INCLUDES A 'HOOKAH BAR' FOR PURPOSES OF EXTENDING TO HOOKAH BARS AND NO OTHERS THE EXEMPTION OF CIGAR BARS FROM THE SMOKING PROHIBITIONS OF G.S. 130A-496(B)(2) AND G.S. 130A-498(B1)(6) IF THE HOOKAH BAR MEETS THE FOLLOWING FIVE REQUIREMENTS AND NO OTHERS: (1) THE HOOKAH BAR'S PRIMARY BUSINESS IS TO RENT TO PATRONS A HOOKAH PIPE THAT CONTAINS A SPECIFIED AMOUNT OF FLAVORED TOBACCO FOR THE PURPOSE OF SMOKING THE HOOKAH PIPE ON THE PREMISES, (2) FORTY PERCENT OF THE HOOKAH BAR'S QUARTERLY GROSS REVENUE IS GENERATED FROM HOOKAH PIPE RENTALS AND THE SALE OF FLAVORED TOBACCO, (3) THE HOOKAH BAR PROHIBITS INDIVIDUALS UNDER THE AGE OF EIGHTEEN FROM ENTERING THE HOOKAH BAR PREMISES AND DOES NOT ALLOW INDIVIDUALS UNDER THE AGE OF TWENTY-ONE TO ENTER THE PREMISES IF IT HAS A PERMIT TO SELL ALCOHOLIC BEVERAGES, (4) THE HOOKAH BAR PROHIBITS THE SMOKING OF CIGARETTES AND CIGARS ON THE HOOKAH BAR'S PREMISES, AND (5) THE HOOKAH BAR MEETS THE APPLICABLE REQUIREMENTS OF ARTICLE 23 OF CHAPTER 130A OF THE GENERAL STATUTES PERTAINING TO QUARTERLY REVENUE REPORTING AND VERIFICATION AND TO STRUCTURAL AND SMOKE MIGRATION REQUIREMENTS.
Sponsor: Senator Fletcher Hartsell, Jr.
Representative Verla Insko explained the bill. There was a House proposed committee substitute #2 which changed the title. Representative Stewart moved for adoption of the proposed committee substitute, and it was adopted. Representative Allen offered an

amendment, and the amendment was adopted. Representative Samuelson moved for a favorable report as amended. Motion passed.

SB 460 - A BILL TO BE ENTITLED AN ACT TO ELIMINATE ABUSIVE PRACTICES AND PROVIDE FOR THE HUMANE CARE AND TREATMENT OF DOGS AND PUPPIES BY ESTABLISHING STANDARDS FOR THEIR CARE AT COMMERCIAL BREEDING OPERATIONS, EXCLUDING KENNELS OR ESTABLISHMENTS OPERATED FOR THE PURPOSE OF BOARDING OR TRAINING HUNTING, SPORTING, HERDING, SHOW, OR WORKING DOGS.

Sponsor: Senator Don Davis

Senator Davis explained the bill and asked the Committee to consider the fundamental question of whether puppy mill operations should be acceptable in the state of North Carolina. The purpose of the bill is for standards to be set to prevent inconsistent standards across 100 counties. He also provided a handout. Representative Pat McElraft, a primary sponsor of the House companion bill, spoke from a perspective as one who supports NRA that this bill is not about NRA and hunting dogs. She said that puppy mills in the state of North Carolina are wrong. This is about consumer protection and asked the Committee to support the bill. Kevin Leonard, representing the North Carolina Association of County Commissioners, spoke in favor of the bill. Henri McClees, representing North Carolina Sporting Dog Association, spoke against the bill and said that North Carolina has good civil and criminal laws in place that take care of animal cruelty situations. She stated that the bill was ambiguous and asked the Committee to vote against it. The Chair recognized Committee members for comments and questions. Representative Gillespie recommended to the Chair that a show of hands in voting for the bill would be sufficient. Representative Samuelson offered an amendment. Senator Davis supported the amendment. The amendment was adopted. Representative Ty Harrell moved that SB 460 receive a favorable report as amended with a re-referral to the Committee on Finance. By a show of hands, the bill passed with a vote of 14 ayes and 12 nays.

The meeting adjourned at 4:24 p.m.

Respectfully submitted,

Representative Margaret H. Dickson
Presiding Chair

Brenda Lee
Committee Assistant

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 6, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Weller	NC Federation of Pay. Clubs
[illegible]	—
ZACH PRITCHETT	CMA
Gary Harris	NCPCM
Doug Hong	NCPCM
Ken Melton	KMA.
Chris Hollis	K&L Gates
Preston Howard	MCIC
Seann Barnes	Farm Bureau
[illegible]	"
[illegible]	MCIC

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 6, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
McLEMANN	NCRPA
ANTHONY ALLEN	NCACC
Eddie Caldwell	NC Sheriffs' Assn.
Pat G. Vance	APPENC
HUGH TILSON	NUHA
[illegible]	American Cancer Society
[illegible]	S.A.
Dana Sipes	SA
Amanda Arnold	HSUS
Emily Stamper	EDTOR
Dwight B. Evans	CCI

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 6, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NC DOT
[illegible]	WCSR
Gene Ainsworth	A & A
[illegible]	[illegible] & Assoc.
Lawless Bean	City of Wilmington
Angie White	NRPC
Kevin Leonard	NCACC
Anthony Allen	NCACC
Henry Jones	Attorney [illegible]
Stevie McClees	McClees Consulting
Joe McClees	McClees Consulting

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 6, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mindy Stinner	Conservators' Center
Cindy Stansell	NCFDC
Ed Regan	NCRGEA

VISITOR REGISTRATION SHEET

House Commerce, Small Business, and Entrepreneurship August 6, 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Metcalf	The Policy Group

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒ Committee Substitute #1 for

SB 884 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE TERM 'CIGAR BAR' INCLUDES A 'HOOKAH BAR' FOR PURPOSES OF EXTENDING TO HOOKAH BARS AND NO OTHERS THE EXEMPTION OF CIGAR BARS FROM THE SMOKING PROHIBITIONS OF G.S. 130A-496(B)(2) AND G.S. 130A-498(B1)(6) IF THE HOOKAH BAR MEETS THE FOLLOWING FIVE REQUIREMENTS AND NO OTHERS: (1) THE HOOKAH BAR'S PRIMARY BUSINESS IS TO RENT TO PATRONS A HOOKAH PIPE THAT CONTAINS A SPECIFIED AMOUNT OF FLAVORED TOBACCO FOR THE PURPOSE OF SMOKING THE HOOKAH PIPE ON THE PREMISES, (2) FORTY PERCENT OF THE HOOKAH BAR'S QUARTERLY GROSS REVENUE IS GENERATED FROM HOOKAH PIPE RENTALS AND THE SALE OF FLAVORED TOBACCO, (3) THE HOOKAH BAR PROHIBITS INDIVIDUALS UNDER THE AGE OF EIGHTEEN FROM ENTERING THE HOOKAH BAR PREMISES AND DOES NOT ALLOW INDIVIDUALS UNDER THE AGE OF TWENTY-ONE TO ENTER THE PREMISES IF IT HAS A PERMIT TO SELL ALCOHOLIC BEVERAGES, (4) THE HOOKAH BAR PROHIBITS THE SMOKING OF CIGARETTES AND CIGARS ON THE HOOKAH BAR'S PREMISES, AND (5) THE HOOKAH BAR MEETS THE APPLICABLE REQUIREMENTS OF ARTICLE 23 OF CHAPTER 130A OF THE GENERAL STATUTES PERTAINING TO QUARTERLY REVENUE REPORTING AND VERIFICATION AND TO STRUCTURAL AND SMOKE MIGRATION REQUIREMENTS.

☒ With a favorable report as to House committee substitute bill #2, which changes the title, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 884*

Judiciary II Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 7/23/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S884-PCS85282-RQ-46

Short Title: Cig Saf Amend/DHHS Elec. Supervision. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE FIRE-SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION, TO ESTABLISH A PILOT PROGRAM TO STUDY ALTERNATIVE STAFFING REQUIREMENTS FOR FACILITIES THAT USE ELECTRONIC SUPERVISION DEVICES AND TO DIRECT THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADOPT RULES ESTABLISHING ACCEPTABLE ELECTRONIC SUPERVISION STANDARDS AND RELATED PERSONNEL REQUIREMENTS AT FACILITIES FOR CHILDREN AND ADOLESCENTS WHO HAVE A PRIMARY DIAGNOSIS OF MENTAL ILLNESS AND/OR EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-92-15(p) reads as rewritten:

"(p) The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for ~~Cigarettes.~~Cigarettes, as it read on August 24, 2007."

SECTION 2. G.S. 58-92-30(g) reads as rewritten:

"(g) Whenever any law enforcement personnel or duly authorized representative of the Commissioner shall discover any cigarettes that have not been marked in the manner required by ~~G.S. 58-92-25;~~this Article, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Department of Revenue and shall be forfeited to the State. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette."

SECTION 3. Before January 1, 2010, the Commissioner of Insurance may adopt rules, pursuant to Chapter 150B of the General Statutes, necessary to effectuate the purposes of Article 92 of Chapter 58 of the General Statutes. Those rules shall not become effective earlier than January 1, 2010.

SECTION 4. The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision

devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program shall be implemented at a facility currently authorized to waive the requirement set forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver shall remain in effect until December 31, 2012; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey, that are related to electronic supervision.

SECTION 5. The Department of Health and Human Services shall report on the implementation of the pilot program described in Section 4 of this act, including any findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, 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 April 10, 2010.

SECTION 6. G.S. 143B-147(a)(2) reads as rewritten:

"(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, substance abuse programs including education, prevention, intervention, screening, assessment, referral, detoxification, treatment, rehabilitation, continuing care, emergency services, case management, and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental illness, developmental disabilities, or substance abuse problems of the citizens of this State. Rules establishing standards for certification of child care centers providing Developmental Day programs are excluded from this section and shall be adopted by the Child Care Commission under G.S. 110-88. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

...

(2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes. These rules shall include all of the following:

a. Standards for the use of electronic supervision devices during client sleep hours for facilities licensed under 10A NCAC 27G. 1700 or any related or subsequent regulations setting licensing standards for such facilities.

b. Personnel requirements for facilities licensed under 10A NCAC 27G. 1700, or any related or subsequent regulations setting licensing standards for such facilities, when continuous electronic supervision that meets the standards established under sub-subdivision a. of this of this subdivision is present."

SECTION 7. Sections 1 and 2 of this act become effective January 1, 2010. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 8-6-09

S. B. No. 984 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 984-CSRQ-46

Rep.) Allen
)
Sen.)

1 moves to amend the bill on page 1, lines 18-25
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the lenes and renumbering the
4 remaining sections accordingly;
5
6 and on page 2, line 51, by rewriting the
7 line to read
8 "Section 7. Sections 1 and 2 of this act
9 become effective January 1, 2010. The remainder of
10
11
12
13
14
15
16
17
18
19

SIGNED Lucy T. Allen

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 884*
Judiciary II Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 7/23/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S884-CSRQ-46 [v.2]

8/6/2009 3:24:41 PM

Short Title: Cig Saf Amend/DHHS Elec. Supervision. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE FIRE-SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION TO ESTABLISH A PILOT PROGRAM TO STUDY ALTERNATIVE STAFFING REQUIREMENTS FOR FACILITIES THAT USE ELECTRONIC SUPERVISION DEVICES AND TO DIRECT THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADOPT RULES ESTABLISHING ACCEPTABLE ELECTRONIC SUPERVISION STANDARDS AND RELATED PERSONNEL REQUIREMENTS AT FACILITIES FOR CHILDREN AND ADOLESCENTS WHO HAVE A PRIMARY DIAGNOSIS OF MENTAL ILLNESS AND/OR EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-92-15(p) reads as rewritten:

"(p) The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for ~~Cigarettes.~~Cigarettes, as it read on August 24, 2007."

SECTION 2. G.S. 58-92-30(e) reads as rewritten:

"(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by G.S. 58-92-15 or the certification or certifications for those cigarettes under this Article has expired, shall be subject to forfeiture as contraband under the same procedures as G.S. 75D-5 or G.S. 113-412. Cigarettes forfeited pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette."

SECTION 3. G.S. 58-92-30(g) reads as rewritten:

"(g) Whenever any law enforcement personnel or duly authorized representative of the Commissioner shall discover any cigarettes that have not been marked in the manner required by ~~G.S. 58-92-25,~~this Article, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Department of Revenue and shall be forfeited to the State. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to

these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette."

SECTION 4. Before January 1, 2010, the Commissioner of Insurance may adopt rules, pursuant to Chapter 150B of the General Statutes, necessary to effectuate the purposes of Article 92 of Chapter 58 of the General Statutes. Those rules shall not become effective earlier than January 1, 2010.

SECTION 5. The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program shall be implemented at a facility currently authorized to waive the requirement set forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver shall remain in effect until December 31, 2012; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey, that are related to electronic supervision.

SECTION 6. The Department of Health and Human Services shall report on the implementation of the pilot program described in section 5 of this act including any findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services, 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 April 10, 2010.

SECTION 7. G.S. 143B-147(a)(2) reads as rewritten:

"(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, substance abuse programs including education, prevention, intervention, screening, assessment, referral, detoxification, treatment, rehabilitation, continuing care, emergency services, case management, and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental illness, developmental disabilities, or substance abuse problems of the citizens of this State. Rules establishing standards for certification of child care centers providing Developmental Day programs are excluded from this section and shall be adopted by the Child Care Commission under G.S. 110-88. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

...

(2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes. These rules shall include all of the following:

a. Standards for the use of electronic supervision devices during client sleep hours for facilities licensed under to 10A NCAC 27G.1700 or any related or subsequent regulations setting licensing standards for such facilities.

b. Personnel requirements for facilities licensed under 10A NCAC 27G.1700, or any related or subsequent regulations setting licensing standards for such facilities, when continuous electronic supervision that meets the standards established under sub-subdivision a. of this of this subdivision is present."

SECTION 8. Sections 1-3 become effective January 1, 2010. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 884*

Judiciary II Committee Substitute Adopted 5/11/09
House Committee Substitute Favorable 7/23/09

Short Title: Smoking Prohibition Exemption. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TERM 'CIGAR BAR' INCLUDES A 'HOOKAH BAR' FOR PURPOSES OF EXTENDING TO HOOKAH BARS AND NO OTHERS THE EXEMPTION OF CIGAR BARS FROM THE SMOKING PROHIBITIONS OF G.S. 130A-496(B)(2) AND G.S. 130A-498(B1)(6) IF THE HOOKAH BAR MEETS THE FOLLOWING FIVE REQUIREMENTS AND NO OTHERS: (1) THE HOOKAH BAR'S PRIMARY BUSINESS IS TO RENT TO PATRONS A HOOKAH PIPE THAT CONTAINS A SPECIFIED AMOUNT OF FLAVORED TOBACCO FOR THE PURPOSE OF SMOKING THE HOOKAH PIPE ON THE PREMISES, (2) FORTY PERCENT OF THE HOOKAH BAR'S QUARTERLY GROSS REVENUE IS GENERATED FROM HOOKAH PIPE RENTALS AND THE SALE OF FLAVORED TOBACCO, (3) THE HOOKAH BAR PROHIBITS INDIVIDUALS UNDER THE AGE OF EIGHTEEN FROM ENTERING THE HOOKAH BAR PREMISES AND DOES NOT ALLOW INDIVIDUALS UNDER THE AGE OF TWENTY-ONE TO ENTER THE PREMISES IF IT HAS A PERMIT TO SELL ALCOHOLIC BEVERAGES, (4) THE HOOKAH BAR PROHIBITS THE SMOKING OF CIGARETTES AND CIGARS ON THE HOOKAH BAR'S PREMISES, AND (5) THE HOOKAH BAR MEETS THE APPLICABLE REQUIREMENTS OF ARTICLE 23 OF CHAPTER 130A OF THE GENERAL STATUTES PERTAINING TO QUARTERLY REVENUE REPORTING AND VERIFICATION AND TO STRUCTURAL AND SMOKE MIGRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 2, 2010, G.S. 130A-492(1a) reads as rewritten:

"(1a) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the ~~following:~~following, except sub-subdivision d. of this subdivision:

a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;

b. Has a humidor on the premises; and

c. Does not allow individuals under the age of 21 to enter the premises.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.

d. The term cigar bar includes a hookah bar for the purposes of exemptions from smoking prohibitions under G.S. 130A-496(b)(2) and G.S. 130A-498(b1)(6) if the hookah bar satisfies all of the following:

1. Is an establishment whose primary business is to rent to patrons a hookah pipe that contains a specified amount of flavored tobacco for the purpose of smoking the hookah pipe on the premises.
2. Generates forty percent (40%) or more of its quarterly gross revenue from hookah pipe rentals and the sale of flavored tobacco and complies with reporting and verification requirements pertaining to quarterly gross revenue.
3. Does not allow individuals under the age of 18 to enter the premises. If the establishment has a permit to sell alcoholic beverages, the establishment shall not allow individuals under the age of 21 to enter the premises.
4. Prohibits the smoking of cigarettes and cigars on the hookah bar's premises.
5. Complies with free-standing structure and smoke migration requirements of G.S. 130A-496(b)(2)."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute #3 for

SB 460 A BILL TO BE ENTITLED AN ACT TO ELIMINATE ABUSIVE PRACTICES AND PROVIDE FOR THE HUMANE CARE AND TREATMENT OF DOGS AND PUPPIES BY ESTABLISHING STANDARDS FOR THEIR CARE AT COMMERCIAL BREEDING OPERATIONS, EXCLUDING KENNELS OR ESTABLISHMENTS OPERATED FOR THE PURPOSE OF BOARDING OR TRAINING HUNTING, SPORTING, HERDING, SHOW, OR WORKING DOGS.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill #3 and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 460*
Commerce Committee Substitute Adopted 5/4/09
Finance Committee Substitute Adopted 7/1/09
Rules and Operations of the Senate Committee Substitute Adopted 8/4/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S460-PCS15334-RNf-47

Short Title: Commercial Dog Breeder Regulation. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE ABUSIVE PRACTICES AND PROVIDE FOR THE HUMANE CARE AND TREATMENT OF DOGS AND PUPPIES BY ESTABLISHING STANDARDS FOR THEIR CARE AT COMMERCIAL BREEDING OPERATIONS, EXCLUDING KENNELS OR ESTABLISHMENTS OPERATED FOR THE PURPOSE OF BOARDING OR TRAINING HUNTING, SPORTING, HERDING, SHOW, OR WORKING DOGS.

Whereas, dogs are known as "man's best friend" and were first domesticated more than 14,000 years ago; and

Whereas, dogs have been used as both working and companion animals throughout history and have performed invaluable functions for people, including hunting, herding, protection, and assisting ill and disabled individuals; and

Whereas, there is a long-standing tradition of using dogs for hunting and working in this State; and

Whereas, nothing in this act shall be construed to interfere with an individual's right to participate in hunting and working activities with dogs; and

Whereas, some members of society have chosen to exploit man's best friend for money through the operation of breeding mills wherein large numbers of dogs and their puppies are kept in intolerable and inhumane conditions in the name of maximizing profits from the sale of the puppies; and

Whereas, significant public health and safety concerns have been raised by the abusive and inhumane practice of some unregulated commercial dog breeders; and

Whereas, there have been substantial costs to taxpayers as a result of responding to complaints regarding unregulated commercial dog breeders; and

Whereas, this act is intended to eliminate abusive treatment of dogs by regulating commercial breeding operations only, not by restricting hunting or working rights in any way; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-21 reads as rewritten:

"**§ 19A-21. Purposes.**

The purposes of this Article are (i) to protect the owners of dogs and cats from the theft of such pets; (ii) to prevent the sale or use of stolen pets; (iii) to ~~insure~~ ensure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, commercial breeding, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, breeding, buying, or selling them for such use; (iv) to ~~insure~~ ensure that animals confined in commercial breeding operations, pet shops, kennels, animal shelters and auction markets are provided humane care and treatment; (v) to prohibit the sale, trade or adoption of those animals which show physical signs of infection, communicable disease, or congenital abnormalities, unless veterinary care is assured subsequent to sale, trade or adoption."

SECTION 2. G.S. 19A-23 is amended by adding two new subdivisions to read:

"**§ 19A-23. Definitions.**

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

...

(5b) "Commercial breeder" means any person who owns or maintains 15 or more intact female dogs of breeding age and 30 or more puppies primarily for the purpose of sale. This shall not include kennels or establishments operated for the purpose of boarding or training hunting, sporting, herding, show, or working dogs.

(5c) "Commercial breeding operation" means the physical location or facility at which a commercial breeder breeds or maintains intact female dogs of breeding age and puppies.

...."

SECTION 3. G.S. 19A-24(a) reads as rewritten:

"(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(1a) Establish standards for the care of animals at commercial breeding operations. The standards adopted shall include provisions for adequate daily exercise, adequate veterinary care, appropriate housing for intact female dogs of breeding age, females with litters and weaned puppies, and record keeping.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the

process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

SECTION 4. G.S. 19A-25 reads as rewritten:

"**§ 19A-25. Employees; investigations; right of entry.**

For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner to appoint employees as are necessary in order to carry out and enforce the provisions of this Article, and to assign them interchangeably with other employees of the Animal Health Division. The Director shall cause the investigation of all reports of violations of the provisions of this Article, and the rules adopted pursuant to the provisions hereof; provided further, that if any person shall deny the Director or his representative admittance to his property, either person shall be entitled to secure from any superior court judge a court order granting such admittance. Counties shall have the exclusive authority to investigate violations related to commercial breeding operations and to take appropriate enforcement action as authorized by law."

SECTION 5. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.1. Registration required for commercial breeder; penalty; injunction.**

(a) No commercial breeder shall operate in the State without first registering with the Director. Registration shall be in the manner provided by the Director. Prior to registering, a commercial breeder shall provide the Director a statement that the commercial breeding operation being registered is in full compliance with all established standards in accordance with G.S. 19A-24(a). The registration period shall be the fiscal year and the registration fee shall be fifty dollars ($50.00) for each registration period or part thereof, beginning with the first day of the fiscal year.

(b) Acting as a commercial breeder without first registering as set forth in subsection (a) of this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor.

(c) A commercial breeder who fails to register pursuant to this section, or violates the standards established pursuant to G.S. 19A-24(a)(1a), shall be subject to injunction pursuant to the provisions of G.S. 19A-3 and G.S. 19A-4."

SECTION 6. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.2. Additional standards of care for commercial breeders.**

Commercial breeders shall provide adequate veterinary care to the intact female dogs of breeding age and any puppies in their care and custody."

SECTION 7. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.3. Penalties for commercial breeder failing to provide adequate care for animals.**

The failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession shall constitute a Class 3 misdemeanor, and the commercial breeder shall be subject to a fine of not less than fifty dollars ($50.00) per day per animal. The registration of any commercial breeder convicted under this Article shall be terminated."

SECTION 8. This act becomes effective May 1, 2010, and applies to the commercial breeding of dogs on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4

H. B. No. _____ DATE August 6, 2009

S. B. No. 460 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Samuelson

moves to amend the bill on page 2, lines 32-35

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read "Keeping".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Why Senate Bill 460: The Puppy Mill Bill?

A hunting dog

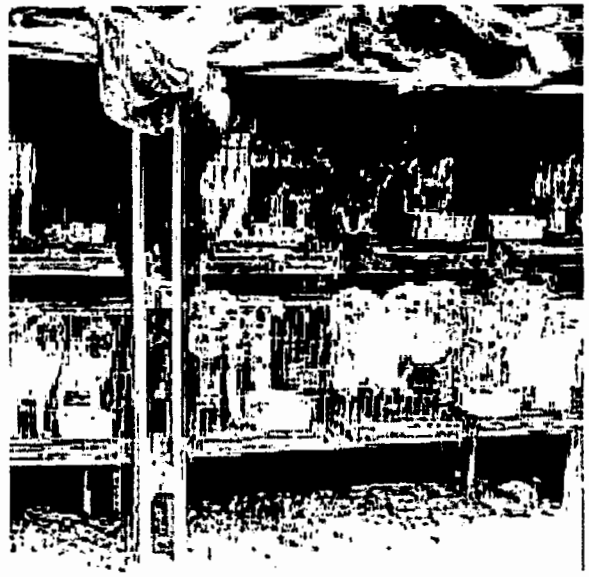
A working dog

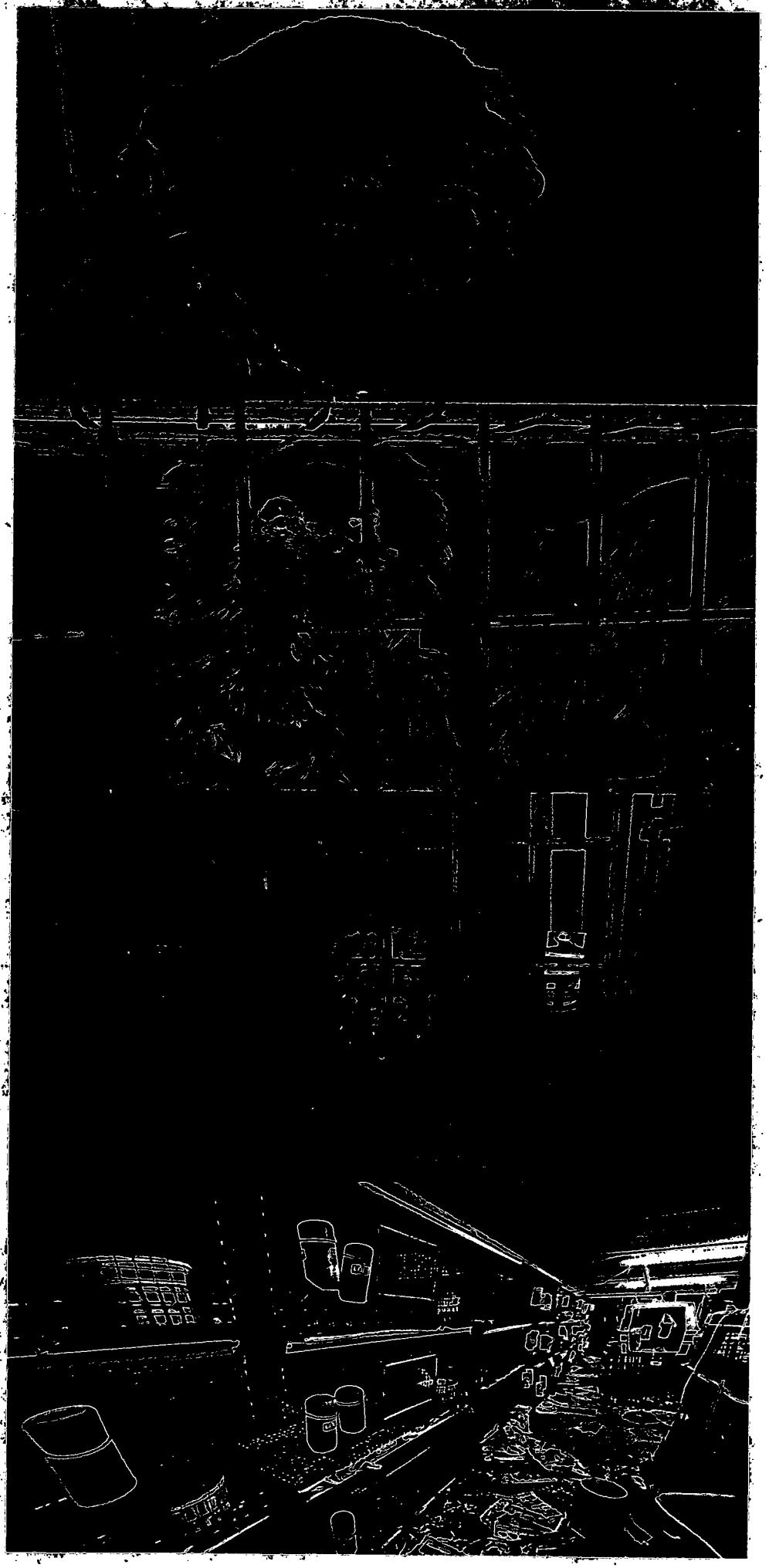
A dog rescued from a puppy mill

A pet shop

An animal shelter

A puppy mill





GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

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 22, 2009

TO: Senator Davis

FROM: Lanier McRee, Fiscal Research Division
Danielle Seale, Fiscal Research Division

RE: PCS on Senate Bill 460 (S460-CSRW-64 v11)

FISCAL IMPACT

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

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES:	**$6,200**	**$7,250**	**$9,750**	**$12,250**	**$14,250**
Agriculture	$4,338	$5,388	$7,888	$10,388	$12,388
Fees & Forfeitures	$1,862	$1,862	$1,862	$1,862	$1,862
EXPENDITURES:	**$3,435**	**$2,142**	**$3,508**	**$4,570**	**$5,936**
Agriculture	$3,435	$2,142	$3,508	$4,570	$5,936
Correction	No fiscal impact anticipated				
Judicial Branch	Indeterminate fiscal impact				
POSITIONS	**0**	**0**	**0**	**0**	**0**
Agriculture	0	0	0	0	0
Correction	0	0	0	0	0
Judicial Branch	0	0	0	0	0

EFFECTIVE DATE: May 1, 2010

NOTE:

There was no bill summary prepared for SB 460.

Short Title: Commercial Dog Breeder Regulation.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 4

SENATE BILL 460*

Commerce Committee Substitute Adopted 5/4/09
Finance Committee Substitute Adopted 7/1/09
Rules and Operations of the Senate Committee Substitute Adopted 8/4/09

Short Title: Commercial Dog Breeder Regulation. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE ABUSIVE PRACTICES AND PROVIDE FOR THE HUMANE CARE AND TREATMENT OF DOGS AND PUPPIES BY ESTABLISHING STANDARDS FOR THEIR CARE AT COMMERCIAL BREEDING OPERATIONS, EXCLUDING KENNELS OR ESTABLISHMENTS OPERATED FOR THE PURPOSE OF BOARDING OR TRAINING HUNTING, SPORTING, HERDING, SHOW, OR WORKING DOGS.

Whereas, dogs are known as "man's best friend" and were first domesticated more than 14,000 years ago; and

Whereas, dogs have been used as both working and companion animals throughout history and have performed invaluable functions for people, including hunting, herding, protection, and assisting ill and disabled individuals; and

Whereas, there is a long-standing tradition of using dogs for hunting and working in this State; and

Whereas, nothing in this act shall be construed to interfere with an individual's right to participate in hunting and working activities with dogs; and

Whereas, some members of society have chosen to exploit man's best friend for money through the operation of breeding mills wherein large numbers of dogs and their puppies are kept in intolerable and inhumane conditions in the name of maximizing profits from the sale of the puppies; and

Whereas, significant public health and safety concerns have been raised by the abusive and inhumane practice of some unregulated commercial dog breeders; and

Whereas, there have been substantial costs to taxpayers as a result of responding to complaints regarding unregulated commercial dog breeders; and

Whereas, this act is intended to eliminate abusive treatment of dogs by regulating commercial breeding operations only, not by restricting hunting or working rights in any way; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-21 reads as rewritten:

"**§ 19A-21. Purposes.**

The purposes of this Article are (i) to protect the owners of dogs and cats from the theft of such pets; (ii) to prevent the sale or use of stolen pets; (iii) to ~~insure~~ ensure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, commercial breeding, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, breeding, buying, or selling them for such

use; (iv) to ~~insure~~ ensure that animals confined in commercial breeding operations, pet shops, kennels, animal shelters and auction markets are provided humane care and treatment; (v) to prohibit the sale, trade or adoption of those animals which show physical signs of infection, communicable disease, or congenital abnormalities, unless veterinary care is assured subsequent to sale, trade or adoption."

SECTION 2. G.S. 19A-23 is amended by adding two new subdivisions to read:

"**§ 19A-23. Definitions.**

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

...

(5b) "Commercial breeder" means any person who owns or maintains 15 or more intact female dogs of breeding age and 30 or more puppies primarily for the purpose of sale. This shall not include kennels or establishments operated for the purpose of boarding or training hunting, sporting, herding, show, or working dogs.

(5c) "Commercial breeding operation" means the physical location or facility at which a commercial breeder breeds or maintains intact female dogs of breeding age and puppies.

...."

SECTION 3. G.S. 19A-24(a) reads as rewritten:

"(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(1a) Establish standards for the care of animals at commercial breeding operations. The standards adopted shall include provisions for adequate daily exercise, adequate veterinary care, appropriate housing for intact female dogs of breeding age, females with litters and weaned puppies, and record keeping. The standards applicable to animal shelters shall apply to commercial breeding facilities unless otherwise established.

(1b) Provide a consumer protection registry available on the Internet that lists all registered commercial breeding facilities.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i)

that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

SECTION 4. G.S. 19A-25 reads as rewritten:

"**§ 19A-25. Employees; investigations; right of entry.**

For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner to appoint employees as are necessary in order to carry out and enforce the provisions of this Article, and to assign them interchangeably with other employees of the Animal Health Division. The Director shall cause the investigation of all reports of violations of the provisions of this Article, and the rules adopted pursuant to the provisions hereof; provided further, that if any person shall deny the Director or his representative admittance to his property, either person shall be entitled to secure from any superior court judge a court order granting such admittance. Counties shall have the exclusive authority to investigate violations related to commercial breeding operations and to take appropriate enforcement action as authorized by law."

SECTION 5. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.1. Registration required for commercial breeder; penalty; injunction.**

(a) No commercial breeder shall operate in the State without first registering with the Director. Registration shall be in the manner provided by the Director. Prior to registering, a commercial breeder shall provide the Director a statement that the commercial breeding operation being registered is in full compliance with all established standards in accordance with G.S. 19A-24(a). The registration period shall be the fiscal year and the registration fee shall be fifty dollars ($50.00) for each registration period or part thereof, beginning with the first day of the fiscal year.

(b) Acting as a commercial breeder without first registering as set forth in subsection (a) of this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor.

(c) A commercial breeder who fails to register pursuant to this section, or violates the standards established pursuant to G.S. 19A-24(a)(1a), shall be subject to injunction pursuant to the provisions of G.S. 19A-3 and G.S. 19A-4."

SECTION 6. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.2. Additional standards of care for commercial breeders.**

Commercial breeders shall provide adequate veterinary care to the intact female dogs of breeding age and any puppies in their care and custody."

SECTION 7. Article 1A of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.3. Penalties for commercial breeder failing to provide adequate care for animals.**

The failure of a commercial breeder to adequately house, exercise, feed, water, provide adequate veterinary care, or otherwise meet the standards of care for the animals in the commercial breeder's custody or possession shall constitute a Class 3 misdemeanor, and the commercial breeder shall be subject to a fine of not less than fifty dollars ($50.00) per day per animal. The registration of any commercial breeder convicted under this Article shall be terminated."

SECTION 8. This act becomes effective May 1, 2010, and applies to the commercial breeding of dogs on or after that date.

House Standing Committee

Commerce, Small Business and Entrepreneurship

2010 Session

Representative Cullie Tarleton, Chairman

Susan H. Whitehead, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

House Standing Committee
Commerce, Small Business, and Entrepreneurship
2010 Session

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Chair

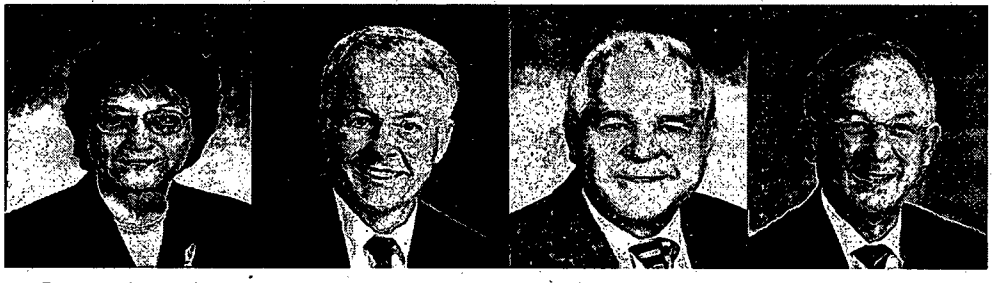
Rep. Alma Adams
Vice-Chair

Rep. Becky Carney
Vice-Chair

Rep. Bruce Goforth
Vice-Chair

Rep. Edgar Starnes
Vice-Chair

Rep. Randy Stewart
Vice-Chair



Rep. Marilyn Avila

Rep. Hugh Blackwell

Rep. Curtis Blackwood

Rep. Jamie Boles

Rep. Van Braxton

Rep. Larry Brown

Rep. Nelson Cole

Rep. Bob England

NORTH CAROLINA GENERAL ASSEMBLY

House Standing Committee
Commerce, Small Business, and Entrepreneurship
2010 Session

Rep. Jean Farmer-Butterfield | Rep. Elmer Floyd | Rep. Phillip Frye

Rep. Mitch Gillespie

Rep. Chris Heagarty | Rep. Bryan Holloway

Rep. John May | Rep. William "Bill" McGee

Rep. Grey Mills | Rep. Bill Owens | Rep. Diane Parfitt | Rep. Garland Pierce

Rep. Ray Rapp | Rep. Ruth Samuelson | Rep. Fred Steen | Rep. Edith Warren | Rep. Michael Wray

HOUSE STANDING COMMITTEE
COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP
2010 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
TARLETON, Cullie Chairman	Susan Whitehead Committee Assistant	733-7727	2217	69
ADAMS, Alma Vice-Chair	Sandra Brown	733-5902	304	67
CARNEY, Becky Vice-Chair	Ann Jordan	733-5827	1221	54
GOFORTH, Bruce Vice-Chair	Meredith Matney	733-5746	1220	21
STARNES, Edgar Vice-Chair	Pattie Fleming	733-5931	602	14
STEWART, Randy Vice-Chair	Ruth Fish	733-5802	1219	95
WILKINS, W.A. "Winkie" Vice-Chair	Nancy Brantley	715-0850	1301	71
AVILA, Marilyn	Susan Lewis	733-5530	1017	112
BLACKWELL, Hugh	Amanda Cheney	733-5805	606	114
BLACKWOOD, Curtis	Ed Stiles	733-2406	1317	97
BOLES, Jamie	Rhonda Todd	733-5903	501	105
BRAXTON, Van	Barbara Hocutt	715-3017	2219	46
BROWN, Larry	Delores Ledford	733-5607	609	73
COLE, Nelson	Linda Laton	733-5779	1218	45
ENGLAND, Bob	Lisa Brown	733-5749	303	5
FARMER-BUTTERFIELD, Jean	Wanda Kay	733-5898	528	53

FLOYD, Elmer	**Latasha McPhaul**	**733-5959**	**1311**	**90**
FRYE, Phillip	**Mary Hayes**	**733-5661**	**602**	**62**
GILLESPIE, Mitch	**Cindy Hobbs**	**733-5862**	**1008**	**74**
HEAGARTY, Chris	**Ruth Merkle**	**733-5602**	**2121**	**108**
HOLLOWAY, Bryan	**Cara Philon**	**733-5609**	**502**	**98**
MAY, John	**Shara Graham**	**733-5860**	**536**	**41**
McGEE, William "Bill"	**Jayne Nelson**	**733-5747**	**531**	**26**
MILLS, Grey	**Wanda Benson**	**733-5741**	**1111**	**117**
OWENS, Bill	**Linda Johnson**	**733-0010**	**635**	**9**
PARFITT, Diane	**Katie Landi**	**733-9892**	**2221**	**42**
PIERCE, Garland	**Mildred Alston**	**733-5803**	**301**	**7**
RAPP, Ray	**Forrest Gilliam**	**733-5732**	**2213**	**17**
SAMUELSON, Ruth	**Susan Phillips**	**715-3009**	**418B**	**102**
STEEN, Fred	**Chris Floyd**	**733-5881**	**514**	**37**
WARREN, Edith	**Martha Hoover**	**715-3023**	**416A**	**35**
WRAY, Michael	**Mary Capps**	**733-5662**	**405**	**60**

ATTENDANCE

Commerce, Small Business, and Entrepreneurship

(Name of Committee)

DATES	5-19-10	5-26-10	6-09-10	6-23-10	6-30-10										
Rep. Tarleton, Chairman	✓	✓	✓	✓	✓										
Rep. Adams, Vice Chair	X		✓	✓											
Rep. Carney, Vice Chair	✓	✓	✓		✓										
Rep. Goforth, Vice Chair	✓		✓	✓											
Rep. Starnes, Vice Chair	✓	✓	✓	✓											
Rep. Stewart, Vice Chair	✓		✓	✓											
Rep. Wilkins, Vice Chair	✓	✓	✓	✓	✓										
Rep. Avila	✓	✓	✓	✓	✓										
Rep. Blackwell	✓	✓	✓	✓	✓										
Rep. Blackwood	✓	✓	✓	✓	✓										
Rep. Boles	✓	✓	✓	✓	✓										
Rep. Braxton	✓		✓	✓	✓										
Rep. Brown	✓		✓	✓											
Rep. Cole	✓	✓	✓	✓	✓										
Rep. England	X	✓	✓	✓											
Rep. Farmer-Butterfield	X			✓											
Rep. Floyd	✓	✓	✓	✓	✓										
Rep. Frye	✓	✓	✓	✓	✓										
Rep. Gillespie	X	✓	✓	✓	✓										
Rep. Heagarty	✓	✓	✓	✓	✓										
Rep. Holloway	✓	✓	✓	✓	✓										
Rep. May	✓	✓	✓	✓	✓										
Rep. McGee	✓	✓	✓	✓											
Rep. Mills	✓	✓	✓	✓	✓										
Rep. Owens	✓		✓	✓											
Rep. Parfitt	✓	✓	✓	✓	✓										

ATTENDANCE

Commerce, Small Business, and Entrepreneurship

(Name of Committee)

DATES	5-19-10	5-26-10	6-9-10	6-23-10	6-30-10										
Rep. Pierce	✓	✓	✓		✓										
Rep. Rapp	✓		✓	✓	✓										
Rep. Samuelson	✓	✓	✓	✓	✓										
Rep. Steen	✓	✓	✓	✓	✓										
Rep. E. Warren	X		✓	✓	✓										
Rep. Wray	X	✓	✓	✓	✓										
T.		✓													

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
29	Lewis	MORTGAGE GUARANTY INSURER SUNSET EXTENDED	*HR	Ch. SL 2010-40	04-13-09	05-12-09
H1455	Burr	CREATION OF YADKIN RIVER TRUST.	H	Ref to the Com on Water Resources and Infrastructure, if favorable, Public Utilities, if favorable, Finance	04-13-09	
H1566	Allred	STUDY TAX CREDIT FOR LID STORMWATER CONTROLS.	H	Ref to the Com on Water Resources and Infrastructure, if favorable, Rules, Calendar, and Operations of the House	04-30-09	
H1567	Allred	TAX CREDIT FOR INNOVATIVE STORMWATER CONTROLS.	H	Ref to the Com on Water Resources and Infrastructure, if favorable, Finance	04-30-09	
H1596	K. Alexander	TAX CREDIT/WATER CON. PRODUCTS AND PROPERTY.	*H	Re-ref Com On Finance	05-06-09	05-26-09
$ H1638	**Samuelson**	**WATER INFRASTRUCTURE COMMN/COORDINATE FUNDS.**	**H**	**Ref to the Com on Water Resources and Infrastructure, if favorable, State Government/ State Personnel, if favorable, Appropriations**	**05-07-09**	
H1743=	Crawford	IMPROVE RIVER BASIN MODELING.	*H	Pres. To Gov. 7/8/ 2010	05-18-10	05-26-10
H1744=	Crawford	MODIFY WATER FUNDING PRIORITIES	*H	Pres. To Gov. 7/8/ 2010	05-18-10	05-26-10
H1744=	Crawford	MODIFY WATER FUNDING PRIORITIES	*H	Pres. To Gov. 7/8/ 2010	06-30-10	07-06-10
H1745=	Crawford	SURVEY AG. WATER INFRASTRUCTURE NEEDS.	*H	Re-ref Com On Agriculture	05-18-10	05-26-10
H1746=	Crawford	WATER INFRASTRUCTURE INFORMATION NEEDS.	*H	Pres. To Gov. 7/8/ 2010	05-18-10	06-09-10
H1746=	Crawford	WATER INFRASTRUCTURE INFORMATION NEEDS.	*H	Pres. To Gov. 7/8/ 2010	06-30-10	07-06-10
H1747=	Crawford	WATER SUPPLY SYSTEM CAPACITY PLANNING.	*H	Pres. To Gov. 7/2/ 2010	05-18-10	06-09-10
H1748=	Crawford	CONSERVE & PROTECT AG WATER RESOURCES.	*H	Pres. To Gov. 7/2/ 2010	05-18-10	06-09-10
H1749=	Crawford	WATER INFRASTRUCTURE NEEDS/CLOSE INFO GAPS.	*H	Re-ref Com On Environment and Natural Resources	05-18-10	06-09-10
H1763=	Gibson	IMPROVE RIVER BASIN	H	Ref to the Com on	05-18-10	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		MODELING.		Water Resources and Infrastructure, if favorable, Environment and Natural Resources		
H1771	K. Alexander	ENCOURAGE WATER CONSERVATION IMPROVEMENTS.	*H	Re-ref Com On Finance	05-19-10	06-01-10
$ H1785=	**Owens**	**RURAL CENTER FUNDS/ WATER INFRASTRUCTURE.**	**H**	**Re-ref Com On Appropriations**	**05-19-10**	**06-01-10**
S0636=	Harry Brown	REIMBURSE BEACH NUISANCE ABATEMENT COST.	*H	Re-ref Com On Appropriations	05-25-09	06-02-09
S0661=	Daniel G. Clodfe	ALLOCATE WATER COST/ LANDLORD-TENANT CHANGES.	*HR	Ch. SL 2009-279	05-18-09	06-03-09
S0833	Daniel G. Clodfe	DELINEATE RIVER BASINS.	H	Held by Senate	04-22-09	04-27-09
S0967	Fletcher L. Hart	CREATION OF YADKIN RIVER TRUST.	*HF	Failed 2nd Reading	05-11-09	08-05-09
S1020	Josh Stein	IMPROVE UPPER NEUSE BASIN WATER QUALITY.	*HR	Ch. SL 2009-486	05-18-09	05-26-09
S1083	John Snow	LITTLE TENNESSEE RIVER BASIN ADVISORY COMM.	*H	Re-ref Com On Finance	07-20-09	07-28-09
S1291=	David W. Hoyle	WATER INFRASTRUCTURE NEEDS/CLOSE INFO GAPS.	*H	Ref to the Com on Water Resources and Infrastructure, if favorable, Environment and Natural Resources	06-07-10	
S1292=	David W. Hoyle	WATER SUPPLY SYSTEM CAPACITY PLANNING.	*H	Ref to the Com on Water Resources and Infrastructure, if favorable, Environment and Natural Resources	06-07-10	
S1294=	David W. Hoyle	CONSERVE & PROTECT AG WATER RESOURCES.	*H	Ref to the Com on Water Resources and Infrastructure, if favorable, Agriculture	06-07-10	

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...l	Introducer	Short Title		Latest Action	In Date	Out Date
)10	Moore	GARNISH WAGES TO SATISFY A JUDGMENT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	02-12-09	
H0022=	Weiss	ENHANCE YOUTH EMPLOYMENT PROTECTIONS.	*HR	Ch. SL 2009-139	02-12-09	03-12-09
H0023=	Weiss	STRENGTHEN CHILD LABOR VIOLATION PENALTIES.	*HR	Ch. SL 2009-351	02-12-09	03-12-09
H0040	Moore	SUMMARY EJECTMENT/ APPEALS.	*H	Re-ref Com On Judiciary II	02-12-09	05-06-09
H0061	Tarleton	PERMIT SEMIMONTHLY SALES TAX PAYMENTS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	02-12-09	
H0085	Burr	INCREASE RAFFLE PRIZE LIMIT.	*HR	Ch. SL 2009-49	02-12-09	03-12-09
$ H0119	**Crawford**	**CONTINUE RURAL ECONOMIC TRANSITION PROGRAM.**	**H**	**Re-ref Com On Appropriations**	**02-11-09**	**03-18-09**
H0175=	Adams	STATE MINIMUM WAGE/ INFLATION INCREASES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	02-18-09	
H0177=	Adams	HEALTHY FAMILIES AND HEALTHY WORKPLACES ACT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Health	02-18-09	
H0212	Goforth	HEALTH INSURANCE POOL PILOT PROGRAM.	*HR	Ch. SL 2009-568	03-16-09	03-25-09
H0251	Gibson	WRECKER SERVICE STORAGE FEES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	02-23-09	
H0274=	Ross	CLARIFYING CHANGES TO STATE LAW.	*HR	Ch. SL 2009-550	03-12-09	03-18-09
H0298	Holloway	TAX DEDUCTION FOR S CORPORATIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	02-26-09	
H0323=	Gulley	PREVENT THE THEFT OF SCRAP METALS.	*HR	Ch. SL 2009-200	03-02-09	04-27-09
$ H0344	**Neumann**	**EMPLOYERS MUST USE**	**H**	**Ref to the Com on**	**03-02-09**	

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	Introducer	Short Title		Latest Action	In Date	Out Date
		FEDERAL E-VERIFY PROGRAM.		Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I, if favorable, Appropriations		
H0402=	M. Alexander	NO ELECTED OFF. RECOMM./CERTAIN CO./ NOTARIES.	*H	Ref to State and Local Government. If fav, re-ref to Health Care	03-05-09	03-18-09
H0433=	Brubaker	CHANGE CORPORATE INCOME TAX.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-09-09	
H0445	Holloway	SMALL BUSINESS TAX EXEMPTION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-09-09	
H0449	McGee	REAL PROPERTY SALES INFORMATION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-09-09	
92=	E. Warren	EXPAND MILL REHABILITATION TAX CREDIT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-16-09	
H0593	Luebke	MODIFY GOOD CAUSE WAIVERS.	*H	Pres. To Gov. 7/9/ 2010	04-22-09	05-11-09
H0615	Martin	BUSINESS TRUSTS.	*HR	Ch. SL 2009-174	05-05-09	05-11-09
$ H0619	**Harrison**	**N C GREEN BUSINESS FUND.**	**H**	**Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations**	**03-17-09**	
H0636	Haire	SCHOOL CALENDAR FLEXIBILITY/INCLEMENT WEATHER.	*HR	Ch. SL 2010-10	04-16-09	05-11-09
H0691	Womble	STATE CONTRACTS/ SLAVERY PROFITS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	03-23-09	
H0698	Dickson	FAYETTEVILLE TECH. UMSTEAD ACT EXEMPTION.	HR	Ch. SL 2009-207	04-30-09	05-06-09
H0715	Allen	ADVERTISEMENT OF	H	Ref to the Com on	03-23-09	

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	Introducer	Short Title		Latest Action	In Date	Out Date
		CORPORATE/LLC DISSOLUTION.		Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II		
H0716=	Allen	REGULATION OF APPRAISAL MANAGEMENT COMPANIES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II, if favorable, Finance	03-23-09	
H0728=	McComas	CLARIFY MILL MACHINERY PRIVILEGE TAX.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-23-09	
H0763=	Gibson	QUALIFIED VENTURE CAPITAL GAIN EXEMPTION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-25-09	
H0769=	Crawford	ENDANGERED MANUFACTURING AND JOBS ACT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-25-09	
H0777	Spear	VACATION RENTALS/ MANDATORY EVACUATIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	03-26-09	
H0805	Glazier	WORKERS' COMP./ CALCULATION OF INCOME.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	03-26-09	
H0806=	Weiss	NOTICE ON LIENS FOR HOA ASSESSMENTS.	*HR	Ch. SL 2009-515	03-26-09	04-30-09
$ H0814=	**Crawford**	**SMALL BUSINESS ASSISTANCE FUND.**	**H**	**Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations**	**03-30-09**	
H0825	Owens	GARBAGE COLLECTION TRUCKS PARKING ON HIGHWAYS.	*HR	Ch. SL 2009-104	04-08-09	04-22-09
H0829=	Hill	DEVELOPMENT TIER	*H	Re-ref Com On	03-30-09	05-11-09

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l	Introducer	Short Title		Latest Action	In Date	Out Date
		EXCEPTION MODIFICATION.		Finance		
H0830	Spear	HYDE COUNTY MINERAL RIGHTS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	03-30-09	
H0843	Jackson	WORKERS' COMP/MEDICAL DIAGNOSTIC TESTING.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	03-30-09	
H0851=	Faison	STATUTE OF REPOSE/ PRODUCTS LIABILITY.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	03-30-09	
H0852	Dickson	DEFER TAX ON BUILDERS' INVENTORY.	*HR	Ch. SL 2009-308	03-30-09	06-04-09
H0869=	Jeffus	SALES TAX INCENTIVES FOR CERTAIN PLANE PARTS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	03-31-09	
77	Wainwright	REPEAL UI DISQUAL. FOR TRAILING SPOUSES.	*HR	Ch. SL 2009-301	03-31-09	05-07-09
H0911=	Tillis	AMEND CPA LAWS/ PRACTICE PRIVILEGES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III, if favorable, Finance	04-01-09	
H0977=	Gibson	EXPAND FILM CREDIT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-02-09	
H0978=	Gibson	RESTORE PRIOR APPT. PROCESS/AUCTIONEERS COMM.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, State Government/ State Personnel	04-02-09	
H0979=	Gibson	AMEND HOME INSPECTOR LICENSURE LAWS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-02-09	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H112=	Owens	MAKE BETTER USE OF ECONOMIC INCENTIVES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-02-09	
H1027	Brubaker	PREPAID WIRELESS TELEPHONE SERVICE/ SUNSET.	HR	Ch. SL 2009-90	04-23-09	04-30-09
H1030	Howard	EXEMPT PLUMB'G CONTRACTOR/WELL CONTRACTR REQS.	H	Re-ref Com On Commerce, Small Business, and Entrepreneurship	04-06-09	05-07-09
H1030	Howard	EXEMPT PLUMB'G CONTRACTOR/WELL CONTRACTR REQS.	H	Re-ref Com On Commerce, Small Business, and Entrepreneurship	05-14-09	
H1051=	Blue	PROTECT TENANTS IN FORECLOSED PROPERTY.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-06-09	
H1053	Blue	LANDLORD/TENANT LAW REVISIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-06-09	
H156=	Blue	CIVIL LIABILITY/ PROHIBITED DEBT COLLECTION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-06-09	
H1057=	Blue	ABOLISH CERTAIN DEFICIENCY JUDGMENTS.	*HR	Ch. SL 2009-441	04-06-09	04-30-09
H1062	Goforth	AMEND RULE/RESORT SPAS/RECORDS RETENTION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	04-06-09	
H1070	Lewis	BACK TO WORK TAX INCENTIVE.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-06-09	
H1072	Lewis	TAX CREDIT FOR HIRING UNEMPLOYMENT RECIPIENT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-06-09	
H1084	Hill	REVISE LPG DEALER	*HR	Ch. SL 2009-386	05-05-09	05-11-09

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l	Introducer	Short Title		Latest Action	In Date	Out Date
		REQUIREMENTS.				
----05	Martin	AMEND LAWS/ REFRIGERATION CONTRACTORS.	*HR	Ch. SL 2009-333	04-07-09	05-06-09
H1113	Goodwin	OPT-OUT/ATTY SOLICITATIONS OF REPRESENTATION.	*H	Re-ref Com On Judiciary I	04-07-09	05-06-09
H1139	K. Alexander	REGULATE IRRIGATION SYSTEMS/CITIES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Water Resources and Infrastructure	04-07-09	
H1151=	Farmer-Butterfie	RES. LEAD-BASED PAINT HAZARDS/RENOVATIONS.	*HR	Ch. SL 2009-488	04-08-09	07-15-09
H1169	Glazier	ENACT WARN-NC/GIVE 90-DAY LAYOFF NOTICE.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-08-09	
H1177	Bell	RESTORE FLEXIBILITY TO THE SCHOOL CALENDAR.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Education	04-08-09	
82	Haire	RELOCATION OF EASEMENTS.	*H	Re-ref Com On Judiciary III	04-08-09	05-11-09
H1209=	Cole	NO PREBLENDED GAS FROM IMPORTERS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	04-08-09	
H1210	Cole	FACILITATE ACCESS TO EMERGENCY SUPPLIES.	HR	Ch. SL 2009-195	04-29-09	05-11-09
H1214	Allred	LIMIT NONPROFIT EXECUTIVE COMPENSATION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-08-09	
H1216	Allred	EXEMPT OFFICE EQUIPMENT FROM PROPERTY TAX.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-08-09	
H1219	Allred	NO AUTOMATIC CONTRACT RENEWALS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-08-09	

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:23	Blue	PROTECT CONSUMER/ AUTO FINANCING TRANSACTION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-09-09	
H1226	Love	STATUTE OF REPOSE/ PRODUCTS LIABILITY.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-09-09	
H1227	Gibson	CONFORM LOW-INCOME HOUSING TAX CREDITS.	H	Re-ref Com On Finance	04-09-09	07-01-09
H1228	Gibson	ABC RULES/PRIVATE CLUBS.	*HR	Ch. SL 2009-381	05-11-09	05-13-09
H1229=	Gibson	SALES TAX: RELIANCE ON WRITTEN ADVICE BY DOR.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-09-09	
H1231	Gibson	ALTERNATIVE FILINGS OF FINANCIAL STATEMENT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Insurance	04-09-09	
:35	Gibson	RESIDENTIAL/ NONRESIDENTIAL BLDG. INSPECTIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-09-09	
H1238	Tarleton	MORE RECYCLING AT LARGE EVENTS AND VENUES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources, if favorable, Finance	04-09-09	
H1240=	Wray	HOME PURCHASE STIMULUS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-09-09	
H1246	Haire	WELL GROUTING INSPECTION/BOND REQUIREMENT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources	04-09-09	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H165	Hall	IDENTITY THEFT WARNING/EMPLOYMENT ASSISTANCE.	H	Ref To Com On Commerce	04-09-09	05-11-09
H1280	Howard	CLARIFYING CHANGES/ WORK FIRST PROGRAM.	HR	Ch. SL 2009-489	04-09-09	05-07-09
H1283	Blackwood	GOOD FAITH IMMUNITY/ CERTAIN EMPLOYERS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I	04-09-09	
H1285	Martin	MOTOR VEHICLE REPAIR SHOP REGULATION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-09-09	
H1288	Harrison	PLASTIC BAGS RECYCLING.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources	04-09-09	
H1289	Harrison	LOTTERY-NO CHECK CASHING SITES.	*HF	Failed 2nd Reading	05-05-09	05-11-09
H1306	Carney	RESTORE FLEXIBILITY TO SCHOOL CALENDAR.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	05-12-09	06-04-09
H1318	Randleman	NEW FELONY DEATH BY MOTOR VEHICLE.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	04-09-09	
H1323	Jeffus	CLARIFY DEFINITION/ ESTHETICS/COSMETIC ART.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Health	04-09-09	
H1328	Bryant	SAFE STORAGE OF FIREARMS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-09-09	
H1335	Gibson	MORATORIUM ON EMC RULE MAKING.	*H	Ref To Com On Rules, Calendar, and Operations of the House	05-12-09	05-13-09
H1336	Gibson	AMEND IRRIGATION CONTRACTORS' LICENSING LAWS.	*H	Ref To Com On Finance	04-09-09	07-16-09
H1356	McCormick	COMMERCIAL REAL	H	Re-ref Com On	04-09-09	04-30-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ESTATE BROKER LIEN ACT.		Judiciary II		
H1361	McComas	CLARIFY AUTHORITY/ PLUMBING & HEATING BOARD.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	04-09-09	
H1384	Jones	SHOPPING CARTS/ PREVENT EXPOSURE TO GERMS.	*HF	Failed 2nd Reading	05-07-09	05-13-09
H1388	Fisher	BROWNFIELDS PROPERTY NOTIFICATIONS.	*HR	Ch. SL 2009-181	05-11-09	05-13-09
H1397	Hall	DEBT SETTLING RESTRICTIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	04-13-09	
H1408	Gibson	REWRITE LANDSCAPE CONTRACTOR LAWS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-13-09	
H1409	Justice	BUILDING CODE EXCLUSION/CERTAIN WIRING.	*HR	Ch. SL 2009-532	04-13-09	05-07-09
09	Justice	BUILDING CODE EXCLUSION/CERTAIN WIRING.	*HR	Ch. SL 2009-532	06-30-09	07-02-09
H1410	Justice	BUILDING CODE EXCLUSION/HOT WATER HEATERS.	*H	Ref To Com On Commerce	04-13-09	05-06-09
H1423=	Hilton	IDF ELIGIBILITY MODIFICATIONS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-13-09	
H1424	Stevens	AUTH. DAY CARE OPERATOR/CONDUCT CRIM. CHECKS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-13-09	
H1437	Boles	IMMUNITY/CIVIL LIABILITY/FUNERAL DIRECTORS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	04-13-09	
H1478	Tillis	DESIGN PROFESSIONAL SEALS/PUBLIC RECORDS.	*HR	Ch. SL 2009-346	04-13-09	05-11-09
H1490=	Harrell	LAND DEVELOPMENT PERMIT CHANGES.	*HR	Ch. SL 2009-572	05-06-09	05-13-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[illegible]10	Moore	EXTEND SMALL BUS. HEALTH INS. BENEFIT CREDIT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-20-09	
H1511	Moore	MERCHANT'S DISCOUNT.	*H	Re-ref Com On Finance	04-20-09	05-07-09
H1514=	Crawford	IDF CHANGES/RESEARCH & PROD. SERV. DISTRICTS.	*HR	Ch. SL 2009-523	04-20-09	04-30-09
H1515=	Crawford	EXTEND SUNSET FOR JDIG.	H	Re-ref Com On Finance	04-20-09	07-22-09
H1516=	Crawford	JDIG TECHNICAL MODIFICATIONS.	*HR	Ch. SL 2009-394	04-20-09	04-30-09
H1532=	Barnhart	REQUIRE LICENSE FOR FIRE ALARM CONTRACTING.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, State Government/ State Personnel, if favorable, Finance	04-23-09	
H1540	Gibson	DEVELOPMENT MANAGERS NOT GENERAL CONTRACTORS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	04-27-09	
[illegible]76	Gibson	MERCHANT'S DISCOUNT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-05-09	
H1585	Crawford	AGGREGATES & ASPHALT TAX UNIFORMITY.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-06-09	
$ H1598	**K. Alexander**	**SMALL BUSINESS INCENTIVES STUDY.**	**H**	**Re-ref Com On Rules, Calendar, and Operations of the House**	**05-06-09**	**06-03-09**
H1610	Gibson	CAPITAL INTENSIVE CORPORATION INCENTIVE.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-07-09	
H1611	Gibson	LENGTHEN INVESTMENT PERIOD FOR M&E INCENTIVE.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship,	05-07-09	

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	Introducer	Short Title		Latest Action	In Date	Out Date
				if favorable, Finance		
H1625	Justice	SIMPLIFY TAXATION OF CERTAIN HOA PROPERTY.	H	Re-ref Com On Finance	05-07-09	07-29-09
H1645	Harrell	EXPAND FILM CREDIT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-07-09	
H1668	Lucas	SALES TAX EXEMPTION: 100% RECYCLED MATERIAL.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-13-10	
$ H1721	**Holliman**	**H.E.L.P. SMALL BUSINESS ACT.**	***H**	**Re-ref Com On Appropriations**	**05-17-10**	**05-20-10**
H1726=	Weiss	IMPROVE CHILD CARE NUTRITION/ACTIVITY STNDS.	*H	Pres. To Gov. 7/9/ 2010	05-24-10	06-23-10
$ H1786=	**Wainwright**	**COMMUNITY ECONOMIC DEVELOPMENT FUNDS.**	**H**	**Re-ref Com On Appropriations**	**05-19-10**	**05-31-10**
H1826=	Yongue	SBOE MEMBERS EX OFFICIO TO ECON. DEV. COMM.	*H	Re-ref Com On Commerce, Small Business, and Entrepreneurship	06-15-10	
H1839	Moore	SALES & USE TAX REFUND SUNSET MODIFICATION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-20-10	
H1847=	Pierce	PROMOTE WORK OPPY. TAX CREDIT.	H	Re-ref Com On Appropriations	05-20-10	06-30-10
H1880=	McComas	ECONOMIC INCENTIVES ALIGNMENT & CHANGES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-20-10	
H1906=	Pierce	REGIONAL ECONOMIC RECOVERY HOUSING ALLIANCES.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	05-20-10	
H1911=	Gibson	MODERNIZE ADM. TAX/ RESTORE AMEN. EXCLUSION.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-20-10	
H1913=	Wray	ATV AND PWC SALES TAX HOLIDAY.	H	Ref to the Com on Commerce, Small Business, and	05-20-10	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Entrepreneurship, if favorable, Finance		
H1920	Iler	BRUNSWICK CO. ECONOMIC DEV. COMM. MEMBERSHIP.	*HR	Ch. SL 2010-65	06-16-10	06-23-10
H1932	Owens	INCENTIVES TO FOSTER ECO-INDUSTRIAL PARK.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-24-10	
H1936	Owens	REMOVE SUNSET/ PRIV. SALE LOCAL GOV'T BONDS.	*H	Pres. To Gov. 7/8/ 2010	05-25-10	06-10-10
H1957	Gibson	ENHANCE COMPETITIVENESS OF FILM CREDIT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-25-10	
H1958=	Moore	KEEPING NC COMPETITIVE ACT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-25-10	
H1964	R. Warren	CATAWBA CC/EXCEPTION TO UMSTEAD ACT.	H	Re-ref Com On Education	05-26-10	06-23-10
H1973	Owens	VARIOUS ECONOMIC INCENTIVES.	*H	Pres. To Gov. 7/ 10/2010	05-26-10	06-10-10
H1979=	Luebke	REINSTATE CIGARETTE TAX STAMPS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-26-10	
H1999	Gibson	INCENTIVES: PAPER MAN., TURBINE, & DATACENTER.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-26-10	
H2000=	Gibson	INTERACTIVE DIGITAL MEDIA CREDITS.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-26-10	
H2001	Gibson	SMALL BUSINESS START-UP TAX RELIEF.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-26-10	
$ H2011	**Harrison**	**MORATORIUM ON**	**H**	**Ref to the Com on**	**05-26-10**	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ELECTRONIC BILLBOARDS.		Commerce, Small Business, and Entrepreneurship, if favorable, Transportation, if favorable, Appropriations		
$ H2034	**Heagarty**	**INDIA CENTER AUTHORITY.**	**H**	**Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations**	**05-26-10**	
H2036	McCormick	NC FRANCHISEE PROTECTION ACT.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Finance	05-26-10	
S0005	Richard Stevens	CONTINUING CROSSBOW PERMIT/DEALERS & MANUFAC.	*HR	Ch. SL 2009-6	02-23-09	03-04-09
S0006	Julia Boseman	ABC RULES/PRIVATE CLUBS.	*H	Re-ref Com On Commerce, Small Business, and Entrepreneurship	06-02-09	
S0069	Stan Bingham	CCPS WRECKER SERVICE FEE RULES.	*HR	Ch. SL 2009-461	05-27-09	06-18-09
.14	David W. Hoyle	EXEMPT CHURCHES & CLUBS LU/LA ELEVATORS.	*HR	Ch. SL 2009-79	03-16-09	04-01-09
S0117	David W. Hoyle	CLARIFYING DEVELOPMENT MORATORIA AUTHORITY.	H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources	04-27-09	
S0268=	Daniel G. Clodfe	NO ELECTED OFF. RECOMM./CERTAIN CO./ NOTARIES.	*HR	Ch. SL 2009-227	03-26-09	05-27-09
S0285=	Fletcher L. Hart	REWRITE FOREIGN MONEY JUDGMENTS LAWS.	HR	Ch. SL 2009-325	05-28-09	07-08-09
S0308=	Jim Jacumin	LOW PROFIT LIMITED LIABILITY COMPANY.	*H	Pres. To Gov. 7/9/ 2010	07-13-09	07-22-09
S0332=	Peter S. Brunste	ZOO AND ZOO FUNDS MODIFICATIONS.	*HR	Ch. SL 2009-329	05-20-09	06-03-09
S0405	Fletcher L. Hart	REAL PROPERTY SALES INFORMATION.	*HR	Ch. SL 2009-454	05-05-09	07-08-09
S0412	Peter S. Brunste	MODIFY NC LIMITED LIABILITY COMPANY ACT.	*HR	Ch. SL 2009-247	04-07-09	06-10-09
S0425	Eleanor Kinnaird	STREAMLINE PLAN REV. & INSPECTION/STATE BLDGS.	*HR	Ch. SL 2009-474	05-14-09	08-05-09
S0448	David W. Hoyle	SELF-SERVICE STORAGE FACILITIES.	*HR	Ch. SL 2009-201	05-07-09	05-27-09
S0458	A. B Swindell	GED HS DIPLOMA/NO	*HR	Ch. SL 2009-536	05-04-09	07-02-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		DRUG CONVICT/BAIL BONDSMAN.				
S0460=	Don Davis	COMMERCIAL DOG BREEDER REGULATION.	*H	Re-ref Com On Finance	08-05-09	08-06-09
S0465	Floyd B. McKissi	AMEND STATE FAIR HOUSING ACT.	HR	Ch. SL 2009-388	05-14-09	07-01-09
S0580	David W. Hoyle	N.C. LIFE SCIENCE DEVELOPMENT CORP. ACT.	*H	Re-ref Com On Finance	07-13-09	07-15-09
S0625	Julia Boseman	NO DECEPTIVE ADVERTISING/BUSINESS LOCATION.	HR	Ch. SL 2009-199	04-23-09	05-27-09
S0634	David F. Weinste	TRUTH IN MUSIC ADVERTISING ACT.	*HR	Ch. SL 2009-284	05-14-09	05-27-09
S0643	A. B Swindell	AMEND DRUG EXAM REGULATION.	*HR	Ch. SL 2009-535	05-11-09	07-01-09
S0647=	Tony Rand	AMEND CPA LAWS/ PRACTICE PRIVILEGES.	*HR	Ch. SL 2009-347	05-04-09	05-27-09
S0652	Austin M. Allran	PROHIBIT SALE OF NOVELTY LIGHTERS.	*HR	Ch. SL 2009-230	04-21-09	05-28-09
S0687	Tony Foriest	EXEMPT PLUMB'G CONTRACTOR/WELL CONTRACTR REQS.	*HR	Ch. SL 2009-418	05-18-09	07-15-09
S0709	Austin M. Allran	HOME IMPROVEMENT FRAUD.	*H	Re-ref Com On Judiciary III	05-19-09	06-10-09
S0764	Josh Stein	REAL ESTATE/ SETTLEMENT AGENT EMBEZZLEMENT.	*HR	Ch. SL 2009-348	05-14-09	06-17-09
S0777	Linda Garrou	AFFILIATE LIABILITY FOR OTP EXCISE TAX.	*HR	Ch. SL 2009-559	05-12-09	07-08-09
10	Floyd B. McKissi	AFFORDABLE HOUSING/NO DISCRIMINATION.	*HR	Ch. SL 2009-533	05-14-09	07-08-09
S0829=	Clark Jenkins	REGULATION OF APPRAISAL MANAGEMENT COMPANIES.	*H	Pres. To Gov. 7/2/ 2010	08-06-09	06-10-10
S0831=	Daniel G. Clodfe	EXTEND CERTAIN DEVELOPMENT APPROVALS.	*HR	Ch. SL 2009-406	05-25-09	07-15-09
S0882=	Fletcher L. Hart	STATUTE OF REPOSE/ PRODUCTS LIABILITY.	*HR	Ch. SL 2009-420	05-14-09	07-15-09
S0884	Fletcher L. Hart	CIG SAF AMEND/DHHS ELEC. SUPERVISION.	*HR	Ch. SL 2009-490	08-06-09	08-06-09
S0893	Fletcher L. Hart	WORKERS' COMP SELF-INSURANCE SECURITY ASS'N.	*HR	Ch. SL 2009-242	06-03-09	06-24-09
S0922=	Tony Rand	MODIFY SBIR/STTR GRANT REQUIREMENTS.	*H	Re-ref Com On Judiciary I	05-11-09	06-10-09
S0943=	Linda Garrou	EXPAND FILM CREDIT.	*HR	Ch. SL 2009-529	06-29-09	07-22-09
S0953=	Martin L. Nesbit	PROTECT TENANTS IN FORECLOSED PROPERTY.	*H	Ref to the Com on Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II	05-04-09	
$ S0982=	**Clark Jenkins**	**SMALL BUSINESS ASSISTANCE FUND.**	***H**	**Conf Com Appointed**	**05-18-09**	**08-05-09**
S1006	David W. Hoyle	WITHHOLDING ON CONTRACTORS	*HR	Ch. SL 2009-476	05-14-09	06-17-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		IDENTIFIED BY ITIN.				
)07=	David W. Hoyle	AMEND HOME INSPECTOR LICENSURE LAWS.	*HR	Ch. SL 2009-509	06-10-09	07-29-09
S1018=	Josh Stein	BAN CERTAIN SINGLE-USE BAGS.	*HR	Ch. SL 2009-163	06-09-09	06-17-09
S1029	Stan Bingham	PEO AMENDMENTS.	*HR	Ch. SL 2009-552	05-07-09	06-10-09
S1171=	Daniel G. Clodfe	KEEPING NC COMPETITIVE ACT.	*HR	Ch. SL 2010-91	06-03-10	07-01-10
S1215=	Clark Jenkins	ECONOMIC INCENTIVES ALIGNMENT & CHANGES.	*H	Pres. To Gov. 7/8/ 2010	06-23-10	06-30-10

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3rd Corrected Notice
Remove HB829*Add HB1721

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 19, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
~~HB 769~~	~~Endangered Manufacturing And Jobs Act.~~	~~Representative Crawford, Jr.~~
~~HB 814~~	~~Small Business Assistance Fund.~~	~~Representative Crawford, Jr.~~
HB 1721	H.E.L.P. Small Business Act.	Representative Holliman Representative Braxton Representative Stewart Representative Underhill
~~SB 829~~	~~Regulation of Appraisal Management Companies.~~	~~Senator Jenkins~~

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 7 o'clock on **May 18, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

2nd Corrected Notice

Delete HB769

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 19, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: HB 769 has been removed at Sponsor's request. Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
~~HB 769~~	~~Endangered Manufacturing And Jobs Act.~~	~~Representative Crawford, Jr.~~
~~HB 814~~	~~Small Business Assistance Fund.~~	~~Representative Crawford, Jr.~~
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **13** o'clock on **May 17, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

Corrected Notice
Delete HB 814

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 19, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 769	Endangered Manufacturing And Jobs Act.	Representative Crawford, Jr.
~~HB 814~~	~~Small Business Assistance Fund.~~	~~Representative Crawford, Jr.~~
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **13** o'clock on **May 13, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 19, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 769	Endangered Manufacturing And Jobs Act.	Representative Crawford, Jr.
HB 814	Small Business Assistance Fund.	Representative Crawford, Jr.
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **15** o'clock on **May 12, 2009.**

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

AGENDA

House Committee on
Commerce, Small Business and Entrepreneurship

Wednesday, May 19, 2010

I. Welcome
   a. Commerce, Small Business and Entrepreneurship Committee
   b. Sergeant at Arms
   c. Interns
   d. Pages
   e. Staff

II. *HB 1721 H.E.L.P. Small Business Act*, Representatives Holliman, Braxton, Stewart, Underhill

Serial Referral: Finance, if Favorable Appropriations

IV. Adjourn

North Carolina General Assembly
House Committee on Commerce, Small Business and Entrepreneurship

MINUTES
Wednesday, May 19, 2010

The House Committee on Commerce, Small Business and Entrepreneurship met Wednesday, May 19, 2010, at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Representative Tarleton, Chair, Representatives Carney, Goforth, Starnes, Stewart, Wilkins, Co-Chairs, Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, Floyd, Frye, Heagarty, Holloway, May, McGee, Mills, Owens, Parfitt, Pierce, Rapp, Samuelson, Steen, E. Warren.

Representative Tarleton called the meeting to order. He recognized the pages and thanked the staff and Sergeant-at-Arms for their services. A copy of the visitor's registration sheet is attached.

Representative Tarleton recognized Representative Hugh Holliman who presented a bill entitled "AN ACT TO PROVIDE H.E.L.P. (HEALTH CARE, EMPLOYMENT, LEVERAGE, AND PREPARATION) FOR SMALL BUSINESS IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SMALL BUSINESS" to the committee. (Attachment #1) Representative Holliman explained this bill is a comprehensive package for small businesses to help them through the economic crisis and credit crunch. Staff member Ryan Blackledge reviewed the bill. (Attachment 2) Representative Carney presented an amendment to amend the bill on page 2, line 26 by deleting the word "taxpayers" and substituting the words "small business". (Attachment 3) Representative Goforth made a motion to roll the amendment into a PCS and give the PCS a favorable report, unfavorable to the original bill and re-refer to the committee on Finance. The motion passed.

There being no further business, Representative Tarleton adjourned the meeting.

Respectfully submitted,

Representative Cullie Tarleton, Chairman

Susan H. Whitehead

Susan H. Whitehead, Committee Clerk

HOUSE PAGES

NAME OF COMMITTEE COMMERCE, SMALL BUS. & ENTREPRENEURSHIP DATE 5-19-10

1. Name: Andrew Shinskie
   County: Onslow
   Sponsor: Robert Grady
2. Name: Morgan Welch
   County: Burke
   Sponsor: Hugh Blackwell
3. Name: Laterissia Roberts
   County: Robeson
   Sponsor: Garland Pierce
4. Name: Travis Huffman
   County: Caldwell
   Sponsor: Edgar Starns
5. Name: Kendal Coffey
   County: Caldwell
   Sponsor: Edgar Starns

SGT-AT-ARM

1. Name: FRANK PREVO
2. Name: DON MCLENNAN
3. Name: TRAY RALEY
4. Name: JAMES WORTH

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — May 19, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Gallo	HomeBright Appraisal
Rick Zechini	NC Assoc of Realtors
Jessi Hayes	NC Home Builders Assn
Melanie Solon	DCR
Chris Kulla	CRC
Colleen Kochanek	Kochanek Law Group
Curtis Aldendifer	NC Real Estate Comm'n
Weatherly Rose	Hunton + Williams
Kellie Slappey	John Locke Foundation
Beth Kincaid	LI
Jim Johnson	BSA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — May 19, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Heinen	NC Center for Nonprofits
A Burleson	Rep Jamie Boles
Joan Burleson	Rep Jamie Boles
Kate Binion	NC DOR
Michael Hauser	NC DOR
Ted Beasley	NCVA
Monty Recoullley	NCVA
Dick Carlton	attny
Andy Ellen	NCRMA
Katie Hallaway	Lowes
Elizabeth Pearson	NCRMA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — May 19, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Josiah Irvin	Braxton Interp
John Goodman	NC Chamber
Christy Agner	DOA
Paul Stam	NCBA

HOUSE BILL 1721

Short Title:	H.E.L.P. Small Business Act.	(Public)
Sponsors:	Representatives Holliman, Braxton, Stewart, Underhill (Primary Sponsors); Adams, M. Alexander, Brown, Dockham, England, Faison, Frye, Gibson, Gill, Glazier, Goforth, Harrison, Heagarty, Hill, Hughes, Jackson, Parfitt, Pierce, Rapp, Ross, Tarleton, Wainwright, R. Warren, and Weiss.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations.	

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO PROVIDE H.E.L.P. (HEALTH CARE, EMPLOYMENT, LEVERAGE, AND PREPARATION) FOR SMALL BUSINESSES IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SMALL BUSINESS.

Whereas, small businesses are the backbone of North Carolina's economy; and

Whereas, over 60% of all North Carolinians are employed by a business with fewer than one hundred employees; and

Whereas, small businesses have been hit particularly hard by the recent financial crisis and ensuing credit crunch; and

Whereas, small businesses impact communities not just economically but through their social and civic engagement; Now, therefore,

The General Assembly of North Carolina enacts:

PART 1: TAX BENEFITS FOR SMALL BUSINESSES

INCREASE TAX BENEFITS FOR SMALL BUSINESS EQUIPMENT PURCHASES

SECTION 1.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"**§ 105-228.90. Scope and definitions.**

...

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

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2009,~~ May 1, 2010, including any provisions enacted as of that date which become effective either before or after that date."

INCREASE TAX BENEFITS FOR INVESTMENTS IN SMALL BUSINESSES

SECTION 1.2. G.S. 105-163.012(b) reads as rewritten:

"**§ 105-163.012. Limit; carry-over; ceiling; reduction in basis.**

...

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~seven million five hundred thousand dollars ($7,500,000).~~ eight million dollars ($8,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to

G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds this maximum amount, the Secretary shall allow a portion of the credits claimed by allocating the maximum amount in tax credits in proportion to the size of the credit claimed by each taxpayer."

SECTION 1.3. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2011.~~ January 1, 2013."

TAX BENEFITS FOR SMALL BUSINESSES THAT PROVIDE HEALTH INSURANCE

SECTION 1.4. G.S. 105-129.16E(d) reads as rewritten:

"**§ 105-129.16E. Credit for small business employee health benefits.**

...

(d) Sunset. – This section expires for taxable years beginning on or after ~~January 1, 2010.~~ January 1, 2014."

TAX BENEFITS FOR PUTTING PEOPLE BACK TO WORK

SECTION 1.5. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16J. Credit for small businesses that create jobs.**

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

(1) Full-time job. – Defined in G.S. 105-129.81.

(2) Small business. – A taxpayer that employed no more than 25 full-time employees at the beginning of the taxable year.

(b) Credit. – A taxpayer that meets the eligibility requirements of this section and creates a new, full-time job in this State is allowed a credit. The amount of the credit is equal to one thousand dollars ($1,000) for each new full-time job created and maintained for a period of at least three years. The credit is taken in the taxable year in which the job is created.

(c) Calculation. –The number of new jobs a taxpayer creates or maintains 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) Eligibility Requirements. – In order to be eligible for a credit under this section, the taxpayer must satisfy the following eligibility requirements:

(1) Environmental impact. – The taxpayer must satisfy the environmental impact requirement under G.S. 105-129.83.

(2) Safety and health programs. – The taxpayer must satisfy the safety and health programs requirement under G.S. 105-129.83.

(3) Overdue tax debts. – The taxpayer must not have any overdue tax debts that have not been satisfied or otherwise resolved.

(e) Forfeiture. – A taxpayer forfeits a credit allowed under this section if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer created the job. In addition, a taxpayer forfeits a credit if the taxpayer fails to maintain the job for at least three years. 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. 105-241.21, 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.

(f) Limitations. – A taxpayer may not claim a credit under this section with respect to a job for which the taxpayer claims any other credit under this Chapter for job creation. The credit allowed by this section may not exceed twenty-five thousand dollars ($25,000).

(g) Report. – The Department must publish by May 1 of each year the total credits claimed under this section, itemized by taxpayer, for the 12-month period ending the previous December 31.

(h) Sunset. – This section is repealed for jobs created on or after January 1, 2013."

PART 2: INCREASE FUNDING FOR SMALL BUSINESS SUPPORT PROGRAMS

LEVERAGE FEDERAL FUNDS TO CREATE RESEARCH JOBS

SECTION 2.1. There is appropriated to the Department of Commerce the sum of one million five hundred thousand dollars ($1,500,000) for fiscal year 2010-2011 to be allocated to the One North Carolina Small Business Account.

INCREASE FUNDING FOR SUPPORT SERVICES FOR SMALL BUSINESSES

SECTION 2.2. There is appropriated to the Community College System the sum of four hundred two thousand eight hundred sixty-one dollars ($402,861) for fiscal year 2010-2011 to be used for the Small Business Centers program.

INCREASE ACCESS TO CAPITAL FOR SMALL BUSINESSES

SECTION 2.3. There is appropriated to the North Carolina Rural Economic Development Center, Inc., a nonprofit corporation, the sum of one million dollars ($1,000,000) for fiscal year 2010-2011 to be used to support existing small businesses by expanding access to capital.

MORE MARKETING FOR BUSINESS LINK NORTH CAROLINA PROGRAM

SECTION 2.4. The General Assembly finds that access to information on small business assistance programs is vitally important to the success of the State's small businesses. The General Assembly finds further that the Business Link North Carolina program (BLNC) serves as an excellent clearinghouse for information on small businesses, but that many of the State's small business owners have not heard of BLNC. The General Assembly, therefore, directs the Department of Commerce, to increase its marketing expenditures on the BLNC program so as to reach the North Carolinians who can best benefit from BLNC's services.

PART 3: GENERAL PROVISIONS

SECTION 3.1. Notwithstanding Section 1.1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2009, that increase North Carolina taxable income for the 2009 taxable year become effective for taxable years beginning on or after January 1, 2010.

SECTION 3.2. Section 1.2 is effective for investments made on or after January 1, 2010. Section 1.5 is effective for taxes imposed for taxable years beginning on or after January 1, 2010, and for jobs created on or after January 1, 2010. Sections 2.1, 2.2, and 2.3 become effective July 1, 2010. The remainder of this act is effective when it becomes law.

HOUSE BILL 1721:
H.E.L.P. Small Business Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance, if favorable, Appropriations	**Date:**	May 18, 2010
		Prepared by:	Ryan Blackledge Counsel to Original Study Committee
Introduced by:	Reps. Holliman, Braxton, Stewart, Underhill		
Analysis of:	First Edition		

SUMMARY: House Bill 1721, the H.E.L.P. Small Businesses Act, was recommended by the House Select Committee on Small Businesses, which met during the 2009-10 interim. The bill provides tax benefits to small businesses, including additional expensing of purchases, an increase of the overall cap on the Qualified Business Investments tax credit, a tax credit for providing health insurance, and a jobs creation tax credit. The bill also provides appropriations to organizations that provide programming and access to additional capital for small businesses, including the Department of Commerce, the Community College System, and the NC Rural Economic Development Center. The bill also directs the Department of Commerce to increase its advertising for the BLNC program, which provides an information portal to small business owners.

BILL ANALYSIS: Part I of House Bill 1721 provides additional tax benefits to small businesses. Part II provides appropriations to programs that support small businesses and also directs the Department of Commerce to increase advertisement of available programs.

Section 1.1 conforms North Carolina income tax law to the current Internal Revenue Code. The change would allow North Carolina taxpayers to take advantage of an increase in the expensing limit under Section 179 of the Internal Revenue Code. Section 179 allows the expensing of the entire purchase price of some business assets in the year of purchase rather than taking depreciation throughout the life of the asset. In other words, expensing trades a smaller yearly deduction over time for a larger deduction in year one. This change also simplifies tax reporting because a taxpayer does not need to account for differing Federal and State treatment of the same asset.

Section 1.2 increases the overall cap for "Qualified Business Investments" tax credit from $7.5 million to $8.0 million. The tax credit applies to taxpayers who invest in a business that is primarily engaged in manufacturing, processing, warehousing, wholesaling, research and development, and some service-related industries. If all taxpayers for a given year claim more than the overall cap, then each taxpayer receives a reduction in their allowed credit based on how much everyone else claimed. The cap has been changed several times in the past and total claims last year were just under $7.5 million. Additionally, **Section 1.3** would extend the credit's sunset from January 1, 2011, to January 1, 2013.

Section 1.4 reenacts the expired tax credit available to a small business of no more than 25 employees that provides health benefits to employees who make less than $40,000 per year.[1] The employer must provide at least 50% of the premiums in order to qualify for a credit of up to $250 per employee per year. This section sets a new sunset of January 1, 2014.

Section 1.5 would create a new $1000 tax credit for each new, full-time job that lasts for three years and that is created by a business with no more than 25 full-time employees. The new credit includes forfeiture provisions and would sunset January 1, 2013. A taxpayer may not claim more than $25,000

[1] The federal government is also offering a tax credit beginning in 2010 for small businesses who offer health insurance.

under this credit and cannot claim any other job creation credits in addition to this credit for the same job created.

Section 2.1 appropriates money to the Department of Commerce to be used for the One NC Small Business Account, which is used to provide matching grants and matching funds to businesses applying for federal Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants.[2] This program is managed by the NC Board of Science and Technology.

Section 2.2 appropriates money to the Community College System for the Small Business Centers program. The Small Business Centers provide confidential counseling, library access, and seminars to help with both star-up and ongoing business needs.

Section 2.3 provides money to the NC Rural Economic Development Center, Inc. to help increase small businesses' access to capital. The Rural Center, which serves 85 rural counties, offers investments for small business owners.

Section 2.4 instructs the Department of Commerce to increase the advertising for the Business Link North Carolina (BLNC) Program.[3] BLNC provides a portal to business resources offered throughout the state. The House Select Committee on Small Business study committee concluded that BLNC offers excellent resources, but that many small business owners do not know about the program.

Section 3.1 is a boilerplate provision included each time the General Assembly conforms to an update to the Internal Revenue Code to ensure that the changes to not result in a *ex post facto* increase of the prior tax year's liability.

EFFECTIVE DATE: Section 3.2 provides three different enactment dates. First, the tax provisions apply to taxable years beginning on or after January 1, 2010. Second, the appropriations become effective July 1, 2010. Third, the remainder of the bill is effective when the act becomes law.

BACKGROUND: The House Select Committee on Small Business was established by the Speaker of the House on January 22, 2010, and met six times during the 2009-10 interim, including meetings at the Davidson Community College and the Global TransPark Center. The committee heard from various speakers including executive branch officials, small business assistance programs, lending institutions, small business owners, and staff. Overall, the committee concluded that small businesses would continue to benefit (i) from targeted tax credits and (ii) from programs that provide small businesses the tools they need to succeed, including access to information, counseling, and funding.

H1721-SMME-4(e1) v3

[2] See Part 21 of Article 10 of Chapter 143 of the General Statues for more details.

[3] BLNC's partners include: Department of Commerce, Community College System, Small Business & Technology Development Center, Employment Security Commission of North Carolina, Department of Agriculture & Consumer Services, Department of Revenue, Department of the Secretary of State, N.C. Community Development Initiative, N.C. Biotechnology Center, N.C. Institute of Minority Economic Development, Rural Economic Development Center, N.C. State University's Industrial Extension Service, UNC System

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1721 DATE 5-19-10

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Carney
)
Sen.)

1 moves to amend the bill on page 2, line 26
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "taxpayer" and
4 substituting the words "small business".
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17
18
19

SIGNED Becky Carney

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1721
PROPOSED COMMITTEE SUBSTITUTE H1721-PCS30474-ME-10

Short Title: H.E.L.P. Small Business Act. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO PROVIDE H.E.L.P. (HEALTH CARE, EMPLOYMENT, LEVERAGE, AND PREPARATION) FOR SMALL BUSINESSES IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SMALL BUSINESS.

Whereas, small businesses are the backbone of North Carolina's economy; and

Whereas, over 60% of all North Carolinians are employed by a business with fewer than 100 employees; and

Whereas, small businesses have been hit particularly hard by the recent financial crisis and ensuing credit crunch; and

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...

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...

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TAX BENEFITS FOR PUTTING PEOPLE BACK TO WORK

SECTION 1.5. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16J. Credit for small businesses that create jobs.**

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

(1) Full-time job. – Defined in G.S. 105-129.81.

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SECTION 2.4. The General Assembly finds that access to information on small business assistance programs is vitally important to the success of the State's small businesses. The General Assembly finds further that the Business Link North Carolina program (BLNC) serves as an excellent clearinghouse for information on small businesses, but that many of the State's small business owners have not heard of BLNC. The General Assembly, therefore, directs the Department of Commerce, to increase its marketing expenditures on the BLNC program so as to reach the North Carolinians who can best benefit from BLNC's services.

PART 3: GENERAL PROVISIONS

SECTION 3.1. Notwithstanding Section 1.1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2009, that increase North Carolina taxable income for the 2009 taxable year become effective for taxable years beginning on or after January 1, 2010.

SECTION 3.2. Section 1.2 of this act is effective for investments made on or after January 1, 2010. Section 1.5 is effective for taxes imposed for taxable years beginning on or after January 1, 2010, and for jobs created on or after January 1, 2010. Sections 2.1, 2.2, and 2.3 become effective July 1, 2010. The remainder of this act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1721 A BILL TO BE ENTITLED AN ACT TO PROVIDE H.E.L.P. (HEALTH CARE, EMPLOYMENT, LEVERAGE, AND PREPARATION) FOR SMALL BUSINESSES IN NORTH CAROLINA, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SMALL BUSINESS.

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

(FOR JOURNAL USE ONLY)

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

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

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

Corrected Notice
Delete SB 829

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, May 26, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: **Please make every effort to arrive on time.**

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 978	Restore Prior Appt. Process/Auctioneers Comm.	Representative Gibson, III
~~SB 829~~	~~Regulation of Appraisal Management Companies.~~	~~Senator Jenkins~~

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **17** o'clock on **May 25, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

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HB 978	Restore Prior Appt. Process/Auctioneers Comm.	Representative Gibson, III
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **14** o'clock on **May 24, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

AGENDA

House Committee on
Commerce, Small Business and Entrepreneurship

Wednesday, May 26, 2010

I. Welcome
   a. Commerce, Small Business and Entrepreneurship Committee New Members
      i. Rep. John May District 49 (Franklin, Part Halifax, Part Nash) Replacing Lucy Allen
      ii. Rep. Chris Heagarty District 41 (Part Wake) Replacing Ty Harrell
      iii. Rep. Dianne Parfitt District 44 (Part Cumberland) Replacing Margaret Dickson
   b. Sergeant at Arms
   c. Interns
   d. Pages
   e. Staff

II. Commerce, Small Business and Entrepreneurship website
   a. All documents from meetings will be posted there
   b. You get there by going to the General Assembly website
      i. Click "Committees" (heading across top)
      ii. Click "Committee Websites"
      iii. Scroll down to "House Commerce, Small Business and Entrepreneurship".

III. *HB 978 Restore Prior Appointment Process/Auctioneers Commission*, Representative Gibson
   Serial Referral: If Favorable State Government/State Personnel

IV. Adjourn

North Carolina General Assembly
House Committee on Commerce, Small Business and Entrepreneurship

MINUTES
Wednesday, May 26, 2010

The House Committee on Commerce, Small Business and Entrepreneurship met Wednesday, May 26, 2010, at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Representative Tarleton, Chair, Representatives Carney, Starnes, Wilkins, Co-Chairs, Representatives Avila, Blackwell, Blackwood, Boles, Cole, Floyd, Frye, Heagarty, Holloway, May, McGee, Mills, Parfitt, Samuelson, Steen.

Representative Tarleton called the meeting to order. He recognized the pages and thanked the staff and Sergeant-at-Arms for their services. A copy of the visitor's registration sheet is attached.

Representative Tarleton recognized Representative Pryor Gibson who presented *HB 978 Restore Prior Appointment Process/Auctioneers Commission* to the committee. (Attachment #1) Representative Gibson offered an amendment that would give the Board the discretion to waive the renewal fee for auctioneers over the age of 70. Representative Tarleton excused himself from the vote as he is a registered auctioneer over the age of 70. This motion passed. Representative Carney made a motion to roll the amendment into a PCS and give the PCS a favorable report, unfavorable to the original and re-refer to the Committee on State Government/State Personnel. Representative Carney withdrew her motion to allow Representative Starnes to propose an amendment to the bill which would change page 1 line 13 the word "shall" to "may". Representative Blackwell made a motion to adjourn which was seconded by Representative Boles. This motion was accepted by Representative Tarleton, Chair and the motion passed.

Respectfully submitted,

Representative Cullie Tarleton, Chairman

Susan H. Whitehead, Committee Clerk

COMMERCE, SM. BUS., & ENTREPRENEURSHIP

HOUSE PAGES

NAME OF COMMITTEE _____ DATE MAY 26, 2010

1. Name: Perry Wester

County: Vance

Sponsor: Holliman

2. Name: Kathryn Horrell

County: Harnett

Sponsor: Lewis

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: FRED HINES
2. Name: FRANK PREVO
3. Name: _____
4. Name: _____

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — May 26, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dawn Talton	Appraise This Inc 1309 Glen Eden Dr Ral 27612
Mel Bass	
Jeff Gray	RAW, PA
GARY Boyd	GARY Boyd Auction
William M. O'Neal	O'Neal's Auction Svc.
Larry Bewley	LBA
Henri McClees	McClees Consulting

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — May 26, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K. M. A.
Daniel Blum	Troutman Sanders
Daniel Auburn	ElectriCities of N.C, Inc.
Tom McInnis	Iron Horse Auction Co Inc Rockingham NC
William B Lilly Jr.	Auctioneers Assoc. of NC President
Jem Griffith	Intern - Chris Heagarty

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 978*

Short Title:	Restore Prior Appt. Process/Auctioneers Comm.	(Public)
Sponsors:	Representatives Gibson; Burr, Faison, Lucas, Spear, Tarleton, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel.	

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE FORMER APPOINTMENT PROCESS OF THE NORTH CAROLINA AUCTIONEERS COMMISSION WHEREBY AT LEAST THREE MEMBERS ARE REQUIRED TO BE APPOINTED TO THE COMMISSION PURSUANT TO NOMINATIONS SUBMITTED BY THE AUCTIONEERS ASSOCIATION OF NORTH CAROLINA AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85B-3 reads as rewritten:

"**§ 85B-3. Auctioneers Commission.**

(a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, ~~may~~ shall be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms. Notwithstanding the term for which a member is appointed, each member shall serve at the will of the appointing authority.

(b) At least three members of the Commission shall be experienced auctioneers who are licensed under this Chapter. One member shall be a person who shall represent the public at large and shall not be licensed under this Chapter.

(b1) Each member of the Commission shall be a resident of this State and a citizen of the United States.

(b2) No licensee who has been disciplined by the Commission within five years immediately preceding the date from which the appointment is sought shall be eligible for appointment to the Commission.

(c) The Commission shall employ an executive director and other employees as needed to carry out the duties of this Chapter. ~~All employees shall serve at the pleasure of the Commission.~~ No employee shall be removed from service to the Commission except for good cause shown.

(d) Any action that may be taken by the Commission may be taken by vote of any three of its members.

(e) The members of the Commission shall elect from among themselves a chairman to serve a one-year term. No person shall serve more than two consecutive terms as chairman.

(f) Repealed by Session Laws 1999-142, s. 1, effective October 1, 1999.

(g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5."

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

HOUSE BILL 978:
Restore Prior Appt. Process/Auctioneers Comm

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, State Government/State Personnel	**Date:**	May 25, 2010
Introduced by:	Rep. Gibson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 978 amends the law creating the Auctioneers Commission to restore the former appointment process which requires that at least three members be appointed to the Commission upon nomination of the Auctioneers Association of North Carolina. The bill also adds certain conditions for eligibility for appointment and makes other clarifying changes.***

[As introduced, this bill was identical to S995, as introduced by Sen. Purcell, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: The Auctioneers Commission is authorized to license and discipline auctioneers and to regulate the conduct of auctions in the State. Prior to 2008, at least three of the five members of the North Carolina Auctioneers Commission had to be appointed by the Governor from nominations submitted by the Auctioneers Association of North Carolina. S.L. 2008-138 amended the law to change this mandatory requirement to a permissive one, so that the Governor was not limited to the nominees of the Association.

BILL ANALYSIS: House Bill 978 would restore the requirement that members be appointed upon the nomination of the Auctioneers Association.

The bill also adds a provision that each member of the Commission serves at the will of the appointing authority. Thus, a member can be removed prior to the expiration of the term for which the member was appointed.

Under the bill, each member must be a resident of the State and a citizen of the United States. A licensee who has been disciplined by the Commission within the last five years is ineligible for appointment to the Commission. Currently, the Commission is authorized to employ an executive director and other employees who serve at the pleasure of the Commission. This bill would limit the Commission's authority to dismiss employees only for good cause shown.

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

H978-SMRO-163(e1) v1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 9, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1408	Rewrite Landscape Contractor Laws.	Representative Gibson, III
HB 1932	Incentives to Foster Eco-Industrial Park.	Representative Owens, Jr. Representative Gibson, III
HB 1936	Remove Sunset/ Priv. Sale Local Gov't Bonds.	Representative Owens, Jr.
HB 1973	Extend Various Economic Incentives Sunsets.	Representative Owens, Jr. Representative Gibson, III Representative Wainwright Representative Brubaker
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **8** o'clock on **June 03, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

AGENDA

House Committee on
Commerce, Small Business and Entrepreneurship
Wednesday, June 9, 2010

I. Welcome
   a. Commerce, Small Business and Entrepreneurship Committee
   b. Sergeant at Arms
   c. Interns
   d. Pages
   e. Staff

II. Commerce, Small Business and Entrepreneurship website
   a. All documents from meetings will be posted there
   b. You get there by going to the General Assembly website
      i. Click "Committees" (heading across top)
      ii. Click "Committee Websites"
      iii. Scroll down to "House Commerce, Small Business and Entrepreneurship".

III. HB 1408 Rewrite Landscape Contractor Laws, Representative Gibson
Serial Referral: Finance

IV. HB 1932 Incentives to Foster Eco-Industrial Park, Representative Owens
Serial Referral: Finance

V. HB 1936 Remove Sunset/ Private Sale Local Government Bonds, Representative Owens
Serial Referral: Finance

VI. HB 1973 Extend Various Economic Incentives Sunsets, Representative Owens
Serial Referral: Finance

VII. SB 829 Regulation of Appraisal Management Companies, Senator Jenkins (Representative Brubaker)
Serial Referral: Finance

VIII. Adjourn

North Carolina General Assembly
House Committee on Commerce, Small Business and Entrepreneurship

MINUTES
Wednesday, June 9, 2010

The House Committee on Commerce, Small Business and Entrepreneurship met Wednesday, June 9, 2010, at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Representative Tarleton, Chair, Representatives Adams, Carney, Goforth, Starnes, Stewart, Wilkins, Co-Chairs, Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Floyd, Frye, Gillespie, Heagarty, Holloway, May, McGee, Mills, Owens, Parfitt, Pierce, Rapp, Samuelson, Steen, E. Warren, R. Warren.

Representative Tarleton called the meeting to order. He recognized the pages and thanked the staff and Sergeant-at-Arms for their services. A copy of the visitor's registration sheet is attached.

Representative Tarleton recognized Representative Bru Brubaker who presented *SB 829 Regulation of Appraisal Management Companies* to the committee (Attachment #1). A PCS was presented and Representative Blackwood moved to approve it for consideration. Motion passed (Attachment #2). Representative Brubaker explained the bill. Representative Owens moved to give the PCS a favorable report, unfavorable to the original and re-refer to the committee on Finance. Motion passed.

Representative Tarleton recognized Representative Owens who presented HB 1973 Extend Various Economic Incentives Sunsets to the committee (Attachment #3). A PCS was presented and Representative Braxton moved to approve it for consideration. Motion passed (Attachment #4). Representatives Owens, Gibson, Wainwright, McComas and Martin explained the bill. Representative Goforth presented an amendment (Attachment #5). A motion was made to approve the proposed amendment. Motion passed. Representative Carney made a motion to give a favorable report to the PCS as amended, unfavorable to the original bill and re-refer to the committee on Finance. Motion passed.

Representative Tarleton recognized Representative Owens who presented *HB 1936 Remove sunset/Private Sale Local Government Bonds* to the committee (Attachment #6). Representative Rapp moved to give the bill a favorable report and re-refer to the committee on Finance. Motion passed.

There being no further business the meeting was adjourned.

Respectfully submitted,

Representative Cullie Tarleton, Chairman

Susan H. Whitehead

Susan H. Whitehead, Committee Clerk

HOUSE PAGES

COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP

NAME OF COMMITTEE _____ DATE 6-9-10

1. Name: Sasha Seymore

County: Craven

Sponsor: Underhill

2. Name: Brooke Conrad

County: Gaston

Sponsor: Current

3. Name: Morgan McCullers

County: Wake

Sponsor: Gill

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: MARTHA GADDISON
2. Name: FRANK PREVO
3. Name: TOUISANT AVENT
4. Name: _____

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Aaron Sylott	Commerce
Jonah Jarvis	Rep. Luebke
Bill Scoggin	TSS
Kyle Rose	Fidelity
John McArthur	MCC
Steve Levitas	Kilpatrick Stockton
Christie Barbee	CAPA
Lisa Martin	NC Home Builders
Sara Burrows	Carolina Journal
Bruce Thompson	Parker Poe
Betsy Bailey	PENC

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McGowan	NC Realtors
Ray Burton	NC REALTORS
Paul Shannon	N.C. Green Bus. Fund
Mike Barr	Greensboro Realtors Assoc
Harrison Gilbert	Governor's Office
Elizabeth Robinson	NCRMA
Andy Ellen	NCRMA
John Goodman	NC Chamber
James Andrews	NC State AFL-CIO
Jason Rosin	IATSE Local 491 Wilmington
Jimmy Smith	NCEBA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	MCIC
Lee-Ann Rouzan	MCIC
Elizabeth Biser	DENR
Robin Smith	DENR
Willie A. Johnson	Dem Auctioneers
Beau Memory	NCDOT
	Civil Air
Don Hobart	Gov Affairs
Roz Sawyer	NCCCC
Greg Thompson	NFIB

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Sides	North Carolina Nursery & Landscape Assoc. NCNLA
Steve Wall	Biofuels Center of NC
Gary Sacamido	GSK
Bob Steen	NCFA
Larry Bentley	LBA
Mark Peters	NC Green Industry Council
Dirk Galton	Ashley
Jessi Hayes	NCHBA
[signature]	JLF
Kellie Sloppy	JLF
Christy Agner	DOA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine K Thomas	NCEDA
[signature]	NCEDA
Andrew Meehan	Capstrat
Jane Cole	Forsyth Co. NC
Weatherly Rose	Hunton + Williams
Brian Dempsey	MWC
Gloria Williams	NCPAC
J. William Mast	NC Appraisal Institute
Nancy Toombs	NC Appraisal Institute
Susan M. King	NC Appraisal Institute
Ross Williams	NCNLA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 9, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Speros Fleggeo.	DOA
Sara Nunnow	NCDOC
Stephanie McGarrah	NC DOC
Rita Harris	NCDOC
Dale Carroll	NCDOC
Vance Holloman	NC DST
T. SOLARI	NCDST
Chelsea Corey	NCGA Research

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 829*
Commerce Committee Substitute Adopted 7/28/09
Third Edition Engrossed 8/5/09

Short Title: Regulation of Appraisal Management Companies. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93E of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Real Estate Appraisal Management Companies.

"**§ 93E-2-1. Registration required of real estate appraisal management companies; exceptions.**

Beginning January 1, 2012, it shall be unlawful for any person, corporation, partnership, sole proprietorship, subsidiary, unit, or any other business entity in this State to do any of the following without first registering with the Board under the provisions of this Article:

(1) Directly or indirectly engage or attempt to engage in business as an appraisal management company.

(2) Advertise or make a representation that the person or entity is engaging in or conducting business as an appraisal management company.

(3) In any way act as or provide the services of an appraisal management company.

"**§ 93E-2-2. Definitions.**

(a) The following definitions apply in this Article:

(1) Appraisal management company. – A corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that (i) administers a network of independent contract appraisers; (ii) receives requests for appraisals from clients; (iii) receives a fee paid by the client for the appraisals; and (iv) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request.

An appraisal management company does not include any of the following:

a. Any agency of the federal government or any State or municipal government.

b. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that exclusively employs persons on an employer and employee basis for the performance of appraisals in the normal course of its business and the entity is responsible for ensuring that the appraisals are being performed in accordance with

Article 1 of this Chapter and with the Uniform Standards of Professional Appraisal Practice.

c. Any bank, farm credit system, savings institution, or credit union.

d. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that has as its primary business the development of appraisals in North Carolina in accordance with Article 1 of this Chapter and with the Uniform Standards of Professional Appraisal Practice.

e. Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that has as its primary business the development of appraisals in North Carolina, but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of appraisals that the contracting entity cannot complete either because of the location or type of property in question.

f. Any licensed real estate broker performing activities in accordance with Article 1 of this Chapter.

g. Any officer or employee of an exempt entity described in this subdivision when acting in the scope of employment for the exempt entity.

(2) Board. – The North Carolina Appraisal Board under Article 1 of this Chapter.

(3) Employee. – An individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

(4) Registrant. – A real estate appraisal management company registered pursuant to this Article.

(b) The definitions contained in G.S. 93E-1-4 also apply in this Article.

"**§ 93E-2-3. Rule-making authority.**

The Board shall have the authority to adopt rules not inconsistent with the provisions of this Article and the General Statutes of North Carolina that are reasonably necessary to implement, administer, and enforce the provisions of this Article, including the authority to:

(1) Prescribe forms and procedures for submitting information to the Board.

(2) Prescribe standards of practice for companies registered under this Article.

(3) Prescribe standards for the operation of real estate appraisal management companies.

"**§ 93E-2-4. Qualifications for registration; duties of registrants.**

(a) Any person or entity desiring to be registered as an appraisal management company in this State shall make written application to the Board on forms prescribed by the Board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee under G.S. 93E-2-6 and any other information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed application and fee and upon a determination by the Board that the applicant is of good moral character, the Board shall issue to the applicant a certificate of registration authorizing the applicant to act as a real estate appraisal management company in this State.

(b) The registration required by subsection (a) of this section shall include the following information:

(1) Name of the entity seeking registration.

(2) Business address of the entity seeking registration.

(3) Phone contact information of the entity seeking registration.

(4) If the entity is not a corporation that is domiciled in this State, the name and contact information for the company's agent for service of process in this State.
(5) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns ten percent (10%) or more of the appraisal management company.
(6) The name, address, and contact information for a controlling person.
(7) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this State pursuant to the North Carolina Appraisers Act if a license or certification is required to perform appraisals.
(8) A certification that the entity has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.
(9) A certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the residential real estate appraisal services for the appraisal management company.
(10) An irrevocable Uniform Consent to Service of Process.
(11) Any other information required by the Board pursuant to G.S. 93E-2-3.

(c) Any registrant having a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in unethical conduct shall promptly file a complaint with the Board.

(d) Fees shall be paid to a real estate appraiser based on Federal Deposit Insurance Corporation (FDIC) appraisal management company protocol within 30 days of the date the appraisal is transmitted by the real estate appraiser to the registrant or the registrant's client. Fees shall be paid directly to the real estate appraiser from the lender and not from the registrant. The registrant shall charge a direct fee to the lender for services provided without any fee splits.

(e) To qualify to be registered as an appraisal management company, each individual who owns, directly or indirectly, more than ten percent (10%) of the appraisal management company shall be of good moral character, as determined by the Board, and shall submit all information the Board deems necessary pursuant to the rules adopted by the Board. Additionally, each owner shall certify that he or she has never had a license to act as an appraiser refused, denied, cancelled, or revoked by the State of North Carolina or any other state.

(f) An appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of residential real estate appraisal services unless the independent appraiser is licensed or certified in good standing pursuant to the North Carolina Appraisers Act.

"**§ 93E-2-5. Compliance manager.**

Each appraisal management company registered under this Article shall designate a compliance manager who is responsible for ensuring the company operates in compliance with this Article. The compliance manager shall be a certified general real estate appraiser certified under Article 1 of this Chapter or under the comparable laws of another state. The appraisal management company shall file a form with the Board indicating the appraisal management company's designation of compliance manager and the individual's acceptance of the responsibility. An appraisal management company shall notify the Board of any change in the

appraisal management company's compliance manager. Any appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to G.S. 93E-2-8 until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be considered the compliance manager for purposes of this Article.

"**§ 93E-2-6. Fees and renewals.**

(a) Each application for registration as an appraisal management company under this Article shall be accompanied by a fee of five thousand dollars ($5,000). Registration issued under this Article shall expire on June 30 of each year and shall become invalid after that date unless renewed before the expiration date by filing an application with and paying to the Board a fee of two thousand five hundred dollars ($2,500).

(b) All registrations reinstated after the expiration date are subject to a late filing fee of twenty dollars ($20.00) for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars ($120.00). The late filing fee shall be in addition to the required renewal fee. In the event a registrant fails to reinstate the registration within six months after the expiration date, the registration shall expire and the registrant shall be required to file a new application for registration. Reinstatement of a registration shall not be retroactive.

(c) The Board may issue a replacement registration to the registrant upon payment of fifty dollars ($50.00) to the Board. The Board may certify the registration history of an appraisal management company registered under this Article upon payment of a fee of one hundred dollars ($100.00) to the Board.

"**§ 93E-2-7. Prohibited acts.**

(a) No employee, director, officer, or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Withholding or threatening to withhold timely payment for a real estate appraisal report.

(2) Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser.

(4) Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser.

(5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report.

(6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions.

(7) Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct,

substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or State licensing standards.

(9) Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.

(10) Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services.

(b) No employee, director, officer, or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent.

(2) Use an appraisal report submitted by an independent appraiser for any other transaction.

(3) Require an appraiser to sign any sort of indemnification agreement that would require the appraiser to defend and hold harmless the company, any software provider that the company requires an appraiser to use, or any other company that the company does business with from any liability, damage, losses, or claim.

(4) Require an appraiser to provide the company with the appraiser's digital signature or seal.

(c) Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

(1) Consider additional appropriate property information.

(2) Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion.

(3) Correct errors in the real estate appraisal report.

"**§ 93E-2-8. Disciplinary authority.**

(a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company under this Article or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the Board determines that an applicant, registrant, or any partner, member, manager, officer, director, compliance manager, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

(1) Filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

(2) Violated or failed to comply with any provision of this Article or any rules adopted by the Board.

(3) Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor involving mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

(4) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business.

(5) Been the subject of an order of the Board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser.

(6) Acted as an appraisal management company while not properly licensed by the Board.

(7) Failed to pay the proper filing or renewal fee under this Article.

(b) The Board may, by order, summarily postpone or suspend the registration of an appraisal management company pending final determination of any proceeding under this section. Upon entering the order, the Board shall promptly notify the registrant that the order has been entered and the reasons for the order. The Board shall calendar a hearing within 15 days after the Board receives a written request for a hearing. If a registrant does not request a hearing, the order shall remain in effect until the order is modified or vacated by the Board. If a hearing is requested, after notice of and opportunity for hearing, the Board may modify or vacate the order or extend the order until the Board makes its final determination.

(c) The Board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, compliance manager, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the Board's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the Board.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(f) When a registrant is accused of any act, omission, or misconduct that would subject the registrant to disciplinary action, the registrant, with the consent and approval of the Board, may surrender the registrant's registration and all the rights and privileges pertaining to the registrant for a minimum period of five years. A person who surrenders a registration shall not be eligible for or submit any application for registration during the period the registration is surrendered.

(g) If the Board has reasonable grounds to believe that an appraisal management company has violated the provisions of this Article or that facts exist that would be the basis for an order against an appraisal management company, the Board may at any time, either personally or by a person duly designated by the Board, investigate or examine the books, accounts, records, and files of any registrant or other person relating to the complaint or matter under investigation. The Board may require any registrant or other person to submit a criminal history record check and a set of that person's fingerprints in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of the investigation or examination shall be charged against the registrant.

(h) The Board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, inquiry, or other proceeding conducted by the Board. Upon the production of any

papers, records, or documents, the Board shall have the power to authorize true copies of the papers, records, or documents to be substituted in the permanent record of the matter in which the books, records, or documents shall have been introduced in evidence.

(i) The Board may conduct routine examinations of the books and records of an appraisal management company registered with the Board in order to determine the appraisal management company's compliance with this Article and any rules adopted by the Board pursuant to the authority of G.S. 93E-2-3. An appraisal management company shall maintain in this State all books and records related to real estate appraisal management services. An appraisal management company shall pay any expenses incurred by the Board resulting from the Board's examination of the appraisal management company's books and records.

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

"**§ 93E-2-10. Penalty; injunctive relief.**

(a) Any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor.

(b) The Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Article or rules adopted by the Board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the Board under this Article.

"**§ 93E-2-11. Criminal history record checks of applicants or registrants for registration as appraisal management companies.**

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

(1) Applicant. – A person applying for registration as an appraisal management company pursuant to G.S. 93E-2-4.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,

Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may require that an applicant for registration as an appraisal management company or a registrant consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration to an applicant or registrant. The Board shall ensure that the State and national criminal history of an applicant or registrant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or registrant to be checked, a form signed by the applicant or registrant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.27. 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 expenses associated with conducting the criminal history record check.

(c) If an applicant's or registrant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar registration. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's or registrant's criminal history disqualifies the applicant or registrant for registration, the Board may deny registration of the applicant or registrant. The Board may disclose to the applicant or registrant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or registrant. The applicant or registrant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an

exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration to an applicant or registrant based on information provided in the applicant's or registrant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.27. Criminal history record checks of applicants or registrants for registration as real estate appraisal management companies.**

The Department of Justice may provide to the North Carolina Appraisal Board from the State and National Repositories of Criminal Histories the criminal history of any applicant or registrant for registration under Article 2 of Chapter 93E of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or registrant, a form signed by the applicant or registrant consenting to the criminal history 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 registrant'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 a fee to offset the cost incurred by the Department to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Pursuant to G.S. 93E-2-2, as enacted in Section 1 of this act, a real estate appraisal management company established under federal law shall not be required to pay the initial registration fees required by G.S. 93E-2-6, enacted in Section 1 of this act. However, the real estate appraisal management company established under federal law shall be required to pay registration fees associated with subsequent registration renewal.

SECTION 4. This act becomes effective January 1, 2012.

SENATE BILL 829: Regulation of Appraisal Management Companies

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 2, 2010
Introduced by:	Sen. Jenkins	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Third Edition S829-CSROf-109		

SUMMARY: ***The PCS to Senate Bill 829 amends the Real Estate Appraisers Act to regulate appraisal management companies.***

[As introduced, this bill was identical to H716, as introduced by Reps. Allen, Howard, Blue, Brubaker, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II, if favorable, Finance.]

BILL ANALYSIS: Senate Bill 829 creates a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. The bill requires that beginning January 1, 2011, any person or business entity that acts as an appraisal management company must register with the North Carolina Appraisal Board. An appraisal management company is defined as any business entity that utilizes an appraisal panel and performs appraisal management services. An appraisal panel is a network of licensed or certified appraisers who are independent contractors to the appraisal management company. Appraisal management services include:

- Administering an appraisal panel;
- Recruiting and verifying licenses for potential members of the appraisal panel;
- Negotiating fee and service expectations with appraisers;
- Receiving orders for appraisals from clients and delivering them to appraisers on the panel;
- Taking and determining status of appraisal orders;
- Conducting quality control of completed appraisals; and
- Providing completed appraisals to clients.

The definition of an appraisal management company does not include any government agency, an appraiser who enters an agreement with another appraiser to perform an appraisal and the completed appraisal report is signed by both appraisers, any chartered financial institution, a real estate broker, an officer or employee of an exempt entity acting within the scope of employment, or an attorney or personal representative who orders an appraisal on behalf of a client.

The Appraisal Board is authorized to adopt rule to implement the act and to determine the qualifications of applicants for registration. The applicant must be of good moral character, submit an application and fee, and make a number of certifications about its operating procedure, including that the registrant has a system:

- To verify that appraisers on its panel are North Carolina licensed appraisers in good standing;
- Requiring appraisers to provide information about their geographic and other relevant competencies;

- To review the work of all independent appraisers to validate that appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.
- To maintain detailed records of each service request and the appraiser that performs the appraisal.

Any registrant who believes that an appraiser has violated the law or the Uniform Standards must file a complaint with the Board.

Appraisal management companies must pay fees to an appraiser within 30 days of receiving the appraisal, unless the appraisal does not comply with the conditions of the engagement. In this case, the appraiser must be notified in writing that the fees will not be paid.

Each appraisal management company must designate a compliance manager who must be a certified real estate appraiser under the laws of North Carolina or the comparable laws of another state. The appraisal management company must identify the compliance manager to the Board. Failure to comply with this provision results in registration suspension.

The Appraisal Board is authorized to establish a registration fee, not to exceed $3,500, and a renewal fee, not to exceed $2,000. In addition, the Board is authorized to charge the following fees:

- Late fee $20./month up to $120.
- Replacement fee $50.
- Registration history $100.

No officer, agent, or employee of an appraisal management company shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. The bill lists a number of specific prohibited acts. However, this section does not prohibit an appraisal management company from requesting the appraiser to consider additional information, provide further details through an established dispute process, or correct errors.

The Board has authority to deny, suspend, revoke, or refuse to issue or renew a registration, or restrict or limit activities of a person who owns or participates in the business if it finds that the company or any of its principals or employees has violated any of the provisions of the Act. The Board may also impose a civil penalty not to exceed $10,000 for any violation of the Act and to impose a penalty of up to $25,000 for failure to comply with an order to cease from a prohibited action.

Any person violating the act shall be guilty of a Class 1 misdemeanor. The Board may also seek injunctive relief.

The Board may require applicants or registrants to consent to a criminal history record check. Refusal to consent may be grounds for denial of the registration. If the record check reveals one or more convictions, the Board is not required to automatically bar registration, but may consider a number of factors to determine whether the criminal history disqualifies the applicant or registrant. The Board is granted immunity from civil liability for denying registration based on the criminal history record check, provided it acted in good faith.

Section 2 of the bill authorizes the Department of Justice to provide criminal histories to the Appraisal Board and allows the Department to charge a fee to offset the cost of conducting the record check.

Section 3 amends the law which creates the North Carolina Appraisal Board and designates the appointment of its members. The bill directs the Governor to use one of her five appointments to appoint a person representing either the appraisal management industry or the banking industry.

EFFECTIVE DATE: The provision authorizing the Appraisal Board to adopt rules to implement the act becomes effective when it becomes law. The remainder of the act becomes effective January 1, 2011.

S829-SMRO-165(CSROf-109) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 829*
Commerce Committee Substitute Adopted 7/28/09
Third Edition Engrossed 8/5/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S829-CSROf-109 [v.7]

6/2/2010, 3:50:01 PM

Short Title: Regulation of Appraisal Management Companies. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93E of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Real Estate Appraisal Management Companies.

"**§ 93E-2-1. Registration required of real estate appraisal management companies; exceptions.**

Beginning January 1, 2011, it shall be unlawful for any person, corporation, partnership, sole proprietorship, subsidiary, unit, or any other business entity in this State to do any of the following without first registering with the Board under the provisions of this Article:

(1) Directly or indirectly engage or attempt to engage in business as an appraisal management company.

(2) Advertise or make a representation that the person or entity is engaging in or conducting business as an appraisal management company.

(3) In any way act as or provide the services of an appraisal management company.

"**§ 93E-2-2. Definitions.**

(a) The following definitions apply in this Article:

(1) Appraisal management company. – A corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that utilizes an appraisal panel or fee panel and performs, directly or indirectly, appraisal management services.

An appraisal management company does not include any of the following:

a. Any agency of the federal government or any State or municipal government.

b. An appraiser who enters into an agreement, whether written or otherwise, with another appraiser for the performance of an appraisal, and upon completion of the appraisal, the appraisal report is signed both by the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal, except that

an appraisal management company may not avoid the requirements of this Article by requiring that an employee of the appraisal management company who is an appraiser sign an appraisal report that is completed by an appraiser who is a member of the appraisal panel of the appraisal management company.

c. Any state or federally chartered bank, farm credit system, savings institution, or credit union.

d. Any licensed real estate broker performing only activities in accordance with Article 1 of this Chapter.

e. Any officer or employee of an exempt entity described in this subdivision when acting in the scope of employment for the exempt entity.

f. Any person licensed to practice law in this State, a court appointed personal representative or trustee who orders an appraisal in connection with a bona fide client relationship in which the person directly contracts with an independent appraiser.

(2) Appraisal management services. – Direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client or any other person:

a. Administer an appraiser panel.

b. Recruit, qualify, and /or verify licensing or certification of appraisers who are or may become part of an appraiser panel.

c. Negotiate fees and service level expectations with appraisers who are part of an appraiser panel.

d. Receive an order for an appraisal from one person and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion.

e. Take and determine the status of orders for appraisals.

f. Conduct quality control of a completed appraisal performed by an appraiser who is part of an appraiser panel prior to the delivery of the appraisal to the person that ordered the appraisal.

g. Provide a completed appraisal performed by an appraiser who is part of an appraiser panel to one or more persons who have ordered an appraisal.

(3) Appraiser panel or fee panel. – A network of licensed or certified appraisers who are independent contractors to the appraisal management company that have:

a. Responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that have ordered appraisals through the appraisal management company or to perform appraisals for the appraisal management company directly, on a periodic basis, as requested and assigned by the appraisal management company; and

b. Been selected and approved by an appraisal management company to perform appraisals for any client or the appraisal management company that has ordered an appraisal through the appraisal management company or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company.

(4) Appraisal review. – The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as

part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review.

(5) Board. – The North Carolina Appraisal Board under Article 1 of this Chapter.

(6) Employee. – An individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

(7) Registrant. – A real estate appraisal management company registered pursuant to this Article.

(b) The definitions contained in G.S. 93E-1-4 also apply in this Article.

"**§ 93E-2-3. Rule-making authority.**

The Board shall have the authority to adopt rules that are reasonably necessary to implement, administer, and enforce the provisions of this Article.

"**§ 93E-2-4. Qualifications for registration; duties of registrants.**

(a) Any person or entity desiring to be registered as an appraisal management company in this State shall make written application to the Board on forms prescribed by the Board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee under G.S. 93E-2-6 and any other information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed application and fee and upon a determination by the Board that the applicant is of good moral character, the Board shall issue to the applicant a certificate of registration authorizing the applicant to act as a real estate appraisal management company in this State.

(b) The registration required by subsection (a) of this section shall include the following information:

(1) Legal name of the entity seeking registration.

(2) Business address of the entity seeking registration.

(3) Phone contact information of the entity seeking registration.

(4) If the entity is not a corporation that is domiciled in this State, the name and contact information for the company's agent for service of process in this State.

(5) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns ten percent (10%) or more of the appraisal management company.

(6) The name, address, and contact information for the compliance manager.

(7) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this State pursuant to the North Carolina Appraisers Act if a license or certification is required to perform appraisals.

(8) A certification that the entity has a system in place to require that appraisers inform the appraisal management company of their areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform.

(9) A certification that the entity has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to validate that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

(10) A certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the

residential real estate appraisal services for the appraisal management company.

(11) An irrevocable Uniform Consent to Service of Process.

(12) Any other information required by the Board pursuant to G.S. 93E-2-3.

(c) Any registrant having a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice or engaged in unethical conduct shall promptly file a complaint with the Board.

(d) Registered appraisal management companies shall pay fees to an appraiser within 30 days of the date the appraisal is transmitted by the real estate appraiser to the registrant, except in cases of noncompliance with the conditions of the engagement. In such cases, the registrant shall notify the real estate appraiser in writing that the fees will not be paid.

(e) To qualify to be registered as an appraisal management company, each individual who owns, directly or indirectly, more than ten percent (10%) of the appraisal management company shall be of good moral character, as determined by the Board, and shall submit all information the Board deems necessary pursuant to the rules adopted by the Board. Additionally, each owner shall certify that he or she has never had a license to act as an appraiser refused, denied, cancelled, or revoked by the State of North Carolina or any other state.

(f) A registered appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of residential real estate appraisal services for properties located in this State unless the independent appraiser is licensed or certified in good standing pursuant to the North Carolina Appraisers Act.

"**§ 93E-2-5. Compliance manager.**

Each appraisal management company registered under this Article shall designate a compliance manager who is responsible for ensuring the company operates in compliance with this Article. The compliance manager shall be a certified real estate appraiser on active status and in good standing, certified under Article 1 of this Chapter or under the comparable laws of another state. The appraisal management company shall file a form with the Board indicating the appraisal management company's designation of compliance manager and the individual's acceptance of the responsibility. An appraisal management company shall notify the Board of any change in the appraisal management company's compliance manager. Any appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to G.S. 93E-2-8 until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be considered the compliance manager for purposes of this Article.

"**§ 93E-2-6. Fees and renewals.**

(a) Each application for registration as an appraisal management company under this Article shall be accompanied by a registration fee in an amount set by the Board not to exceed three thousand five hundred dollars ($3,500). Registration issued under this Article shall expire on June 30, 2012, and on June 30 of each year thereafter. The registration shall become invalid after that date unless renewed before the expiration date by filing an application with and paying to the Board a fee in an amount set by the Board not to exceed two thousand dollars ($2,000).

(b) All registrations reinstated after the expiration date are subject to a late filing fee of twenty dollars ($20.00) for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars ($120.00). The late filing fee shall be in addition to the required renewal fee. In the event a registrant fails to reinstate the registration within six months after the expiration date, the registration shall expire and the registrant shall be required to file a new application for registration. Reinstatement of a registration shall not be retroactive.

(c) The Board may issue a replacement registration to the registrant upon payment of fifty dollars ($50.00) to the Board. The Board may certify the registration history of an appraisal management company registered under this Article upon payment of a fee of one hundred dollars ($100.00) to the Board.

"**§ 93E-2-7. Prohibited acts.**

(a) No employee, director, officer, or agent of a registered appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Withholding or threatening to withhold timely payment for a real estate appraisal report.

(2) Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser.

(4) Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser.

(5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report.

(6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions.

(7) Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or State licensing standards.

(9) Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.

(10) Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services.

(11) Altering, modifying, or otherwise changing a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent.

(12) Using an appraisal report submitted by an independent appraiser for any other transaction.

(13) Requiring an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses or claims arising out of the services performed by the appraisal management company, and not the services performed by the appraiser.

(14) Requiring an appraiser to provide the company with the appraiser's digital signature or seal.

(15) Requiring or attempt to require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the appraisal management company and declined the assignment.

(16) Requiring or attempt to require an appraiser to prepare an appraisal under a timeframe that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the appraisal management company and declined the assignment.

(b) Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

(1) Consider additional appropriate property information.

(2) Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion, through the registrant's established dispute process.

(3) Correct errors in the real estate appraisal report.

"**§ 93E-2-8. Disciplinary authority.**

(a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company under this Article or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the Board determines that an applicant, registrant, or any partner, member, manager, officer, director, compliance manager, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

(1) Filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

(2) Violated or failed to comply with any provision of this Article or any rules adopted by the Board.

(3) Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor involving mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

(4) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business.

(5) Been the subject of an order of the Board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser.

(6) Acted as an appraisal management company while not properly licensed by the Board.

(7) Failed to pay the proper filing or renewal fee under this Article.

(b) The Board may, by order, summarily postpone or suspend the registration of an appraisal management company pending final determination of any proceeding under this section. Upon entering the order, the Board shall promptly notify the registrant that the order has been entered and the reasons for the order. The Board shall calendar a hearing within 15 days after the Board receives a written request for a hearing. If a registrant does not request a

hearing, the order shall remain in effect until the order is modified or vacated by the Board. If a hearing is requested, after notice of and opportunity for hearing, the Board may modify or vacate the order or extend the order until the Board makes its final determination.

(c) The Board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, compliance manager, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Board or the person appeals the order and the appeal is denied or dismissed and the person continues to engage in the prohibited action in violation of the Board's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a registrant for the registrant's failure to comply with an order of the Board.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(f) When a registrant is accused of any act, omission, or misconduct that would subject the registrant to disciplinary action, the registrant, with the consent and approval of the Board, may surrender the registrant's registration and all the rights and privileges pertaining to the registrant for a minimum period of five years. A person who surrenders a registration shall not be eligible for or submit any application for registration during the period the registration is surrendered.

(g) If the Board has reasonable grounds to believe that an appraisal management company has violated the provisions of this Article or that facts exist that would be the basis for an order against an appraisal management company, the Board may at any time, either personally or by a person duly designated by the Board, investigate or examine the books, accounts, records, and files of any registrant or other person relating to the complaint or matter under investigation. The Board may require any registrant or other person to submit a criminal history record check and a set of that person's fingerprints in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of the investigation or examination shall be charged against the registrant.

(h) The Board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, inquiry, or other proceeding conducted by the Board. Upon the production of any papers, records, or documents, the Board shall have the power to authorize true copies of the papers, records, or documents to be substituted in the permanent record of the matter in which the books, records, or documents shall have been introduced in evidence.

(i) Upon a request by the Board and with reasonable notice, an appraisal management company shall produce within this State all books and records related to real estate appraisal management services provided for properties located in North Carolina.

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of

the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board, including in electronic form. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

"**§ 93E-2-10. Penalty; injunctive relief.**

(a) Any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor.

(b) The Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Article or rules adopted by the Board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the Board under this Article.

"**§ 93E-2-11. Criminal history record checks of applicants or registrants for registration as appraisal management companies.**

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

(1) Applicant. – A person applying for registration as an appraisal management company pursuant to G.S. 93E-2-4.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for registration to act as a real estate appraisal management company. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may require that an applicant for registration as an appraisal management company or a registrant consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny registration to an applicant or registrant. The Board shall ensure that the State and national criminal history of an applicant or registrant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or registrant to be checked, a form signed by the applicant or registrant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.27. 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 expenses associated with conducting the criminal history record check.

(c) If an applicant's or registrant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar registration. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's or registrant's criminal history disqualifies the applicant or registrant for registration, the Board may deny registration of the applicant or registrant. The Board may disclose to the applicant or registrant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or registrant. The applicant or registrant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying registration to an applicant or registrant based on information provided in the applicant's or registrant's criminal history record check."

SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.27. Criminal history record checks of applicants or registrants for registration as real estate appraisal management companies.**

The Department of Justice may provide to the North Carolina Appraisal Board from the State and National Repositories of Criminal Histories the criminal history of any applicant or registrant for registration under Article 2 of Chapter 93E of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or registrant, a form signed by the applicant or registrant consenting to the criminal history 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 registrant'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 a fee to offset the cost incurred by the Department to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. G.S. 93E-1-5(a) reads as rewritten:

(a) There is created the North Carolina Appraisal Board for the purposes set forth in this Chapter. The Board shall consist of nine members. The Governor shall appoint five members of the Board, and the General Assembly shall appoint four members in accordance with G.S. 120-121, two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives. Members appointed by the Governor shall be appointed from geographically diverse areas of the State. The appointees recommended by the Speaker of the House of Representatives and four of the appointees of the Governor shall be persons who have been engaged in the business of real estate appraising in this State for at least five years immediately preceding their appointment and are also State-licensed or State-certified real estate appraisers. One of the appointees of the Governor shall be a person representing either the real estate appraisal management industry or the banking industry. No more than three of the appointees may be members of the same appraiser trade organization at any one time. The appointees recommended by the President Pro Tempore of the Senate shall be a person not involved directly or indirectly in the real estate, real estate appraisal, or the real estate lending industry. Members of the Board shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Board shall elect one of their members to serve as chairman of the Board for a term of one year. The Governor may remove any member of the Board appointed by the Governor for misconduct, incompetency, or neglect of duty. The General Assembly may remove any member appointed by it for the same reasons. Successors shall be appointed by the appointing authority making the original appointment. All vacancies occurring on the Board shall be filled, for the unexpired term, by the appointing authority making the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms of office commenced July 1, 1994.

SECTION 4. G.S. 93E-2-3, as enacted by Section 1 of this act, becomes effective when it becomes law. The remainder of the act becomes effective January 1, 2011.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for

SB 829 A BILL TO BE ENTITLED AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 1973

Short Title:	Extend Various Economic Incentives Sunsets.	(Public)
Sponsors:	Representatives Owens, Gibson, Wainwright, Brubaker (Primary Sponsors); M. Alexander, Faison, Gill, Glazier, Hughes, Lucas, Moore, Spear, Stewart, Tarleton, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET OF VARIOUS ECONOMIC INCENTIVES AND TO PROVIDE AN ENHANCED INCENTIVE FOR JOBS IN HIGH UNEMPLOYMENT COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.16D(d) reads as rewritten:

"**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

...

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, ~~2011.~~2014."

SECTION 2. G.S. 105-129.16E(d) reads as rewritten:

"**§ 105-129.16E. Credit for small business employee health benefits.**

...

(d) Sunset. – This section expires for taxable years beginning on or after January 1, ~~2010.~~2014."

SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

"**§ 105-129.16F. Credit for biodiesel producers.**

...

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, ~~2010.~~2014."

SECTION 4. G.S. 105-129.75 reads as rewritten:

"**§ 105-129.75. Sunset.**

This Article expires January 1, ~~2011,~~2014, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

SECTION 5. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2011.~~2014."

SECTION 6. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, ~~2011.~~2014."

SECTION 7. G.S. 105-164.14 reads as rewritten:

"**§ 105-164.14. Certain refunds authorized.**

...

(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, ~~2011.~~2014.

...

(l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed for purchases made on or after January 1, ~~2011.~~2014.

...."

SECTION 8. G.S. 105-129.81 is amended by adding a new subdivision to read:

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

...

(11a) High unemployment county. – For the taxable years ending on December 31, 2011, and December 31, 2012, a county that has an unemployment rate equal to or greater than one hundred twenty-five percent (125%) of the State average unemployment rate, as determined by the Secretary of Commerce annually in the development tier ranking published pursuant to G.S. 143B-437.08.

...."

SECTION 9. G.S. 105-129.87(a) reads as rewritten:

"(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, or if a job is located in a high unemployment county, 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"

SECTION 10. Sections 8 and 9 of this act are effective for taxable years beginning on or after January 1, 2010. The remainder of this act is effective when it becomes law.

HOUSE BILL 1973:
Keeping North Carolina Competitive Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 8, 2010
Introduced by:	Reps. Owens, Gibson, Wainwright, Brubaker	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	PCS to First Edition		

SUMMARY: This bill would do the following:

1. ***It would enhance the film production tax credits.***
2. ***It would create a new credit for producers of interactive digital media.***
3. ***It would modify and enhance the sales and use tax benefits for datacenters and create sales and use tax benefits for certain industrial facilities***
4. ***It would extend the sunset for Art. 3J from 1/1/11 to 1/1/14, modify the definition of agrarian growth zones, and modify what types of environmental events disqualified a taxpayer from qualifying for certain economic incentives.***
5. ***It would extend the sunsets for economic incentives for taxpayers that construct renewable fuel facilities, biodiesel producers, interstate passenger air carriers, and professional motorsports racing teams and sanctioning bodies.***
6. ***It would create economic development incentives and favorable tax treatment for Eco-Industrial Parks.***
7. ***It would exempt from sales tax certain wood-chipping machinery.***
8. ***It would provide a price-matching preference in the purchase of goods to North Carolina businesses.***
9. ***It would increase the threshold requirement for performance and payment bonds from $300,000 to $500,000***
10. ***It would establish a statutory preference for small North Carolina construction firms seeking construction contracts awarded by the State.***

BILL ANALYSIS:

Part I: Expand Tax Credits for Production Companies

In 2005, the General Assembly replaced the film industry development grant program with a refundable income tax credit calculated based on the qualifying expenses spent by a production company in connection with a production. In 2009, the credit was modified to provide a production company with the choice of two different credit amounts: either a credit equal to 15% of qualifying expenses[1] or an alternative credit equal to 25% of qualifying expenses, less the difference between the

[1] Qualifying expenses are the total amount spent in North Carolina on (i) goods and services leased or purchased by a production company in connection with a production, (ii) compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. An amount paid in excess of $1 million to an individual for compensation may not be included as a qualifying expense, and (iii) the cost of production-related insurance coverage obtained on the production. Expenses for insurance and coverage purchased from a related member may not be included as a qualifying expense.

amount of tax paid on purchases subject to the privilege tax on mill machinery under G.S. 105-187.51 and the amount of tax the company would have paid on those purchases if they had been subject to the combined general rate of sales tax under G.S. 105-164.4.102

Under current law, North Carolina's refundable film credit is capped at $7.5 million. In order to obtain the credit, the taxpayer's qualifying expenses must exceed $250,000, which cannot include any amount in excess of $1,000,000 paid in compensation to an individual. The credit is 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.

Effective for taxable years beginning on or after 1/1/10, this bill would make a number of changes to the credit. First, it would increase the applicable percentage used to calculate the credit from 15% of the amount of qualifying expenses to 25% of the amount of qualifying expenses and eliminate the alternative credit. Second, it would eliminate the deduction from qualifying expenses of an amount in excess of $1,000,000 paid in compensation to an individual. It would also allow a taxpayer to additionally include as qualifying expenses both employee fringe contributions (including health, pension, and welfare contributions) and per diems, stipends, and living allowances paid for work being performed in the State. Compensation and wages that constitute qualifying expenses would no longer be limited to those for which withholding payments are remitted to Revenue but would include all compensation and wages paid for services performed in North Carolina. Third, it would increase the cap of the film credit from $7.5 million to $20 million.

Part II: Economic Incentives for Interactive Digital Media

Currently, there are no statutory incentives programs for companies that produce virtual world, flight, or training simulations or engines, platforms or other programmed components of such simulations. Effective for taxable years beginning on or after 1/1/11, this bill would create an economic incentive to help to recruit those producers of interactive digital media (IDM)[2] to North Carolina. The credit is available only if the taxpayer meets the wage standard, health insurance, environmental impact, safety and health programs, and no-tax-delinquencies requirements of Article 3J, and is repealed for taxable years beginning on or after 1/1/14. IDM credits may be taken against either franchise or income tax liability. The taxpayer must elect when filing the return which tax the credit will be claimed against, and that election is binding (including with respect to carryfowards). IDM credits may not exceed 50% of the amount of tax against which the credit is claimed, and unused portions of a credit may be carried forward for eight years. If a producer claims or has claimed an IDM credit with respect to a facility, that taxpayer is ineligible for One NC Fund and JDIG grants.

There are two types of IDM credits. The first is a production credit for IDM, and allows a taxpayer with qualifying expenses of at least $100,000 with respect to an IDM production a tax credit in the amount of 15% of the qualifying expenses. Qualifying expenses are amounts spent in NC by an IDM producer in connection with IDM production on production property that is purchased or leased; compensation and wages for services performed in NC; employee fringe contributions; and per diems,

[2] IDM are products intended for commercial use/distribution, produced for distribution on electronic media (including Internet download), containing a computer-controlled, interactive, virtual universe and an appreciable amount of at least 3 of 5 of text, sound, fixed images, animated, images, and 3D geometry.

stipends, and living allowances paid for work being performed in NC. The production credit is limited in two ways:

(1) It is capped at $7.5 million.

(2) It is not available for IDM productions that:

- Are gambling/casino games.
- Are done for academic credit.
- Are developed internally by the taxpayer for internal use.
- Are political advertising.
- Contain obscene material.
- Are Internet site/s for informational purposes.

A taxpayer who claims an Article 3J credit with respect to job creation or business property may not also claim a credit for the IDM production for the same compensation, wages, or investments in business property.

The second credit is a credit for producers of IDM with a company headquarters in this State who create and maintain for at least 3 years a minimum of 20 new, full-time, non-transferred jobs[3] at the headquarters within a 24-month period. Once the job creation requirement is satisfied, the taxpayer may claim the credit for jobs created over a three-year period in an amount equal to $5,000 for each new full-time job, limited to $500,000. Forfeiture of the credit for a job occurs where the job is not maintained for at least 3 years. In such instances, the taxpayer is liable for all past taxes avoided, plus interest, due 30 days after the date of forfeiture with penalties accruing thereafter. A taxpayer who claims an Article 3J credit with respect to job creation may not also claim a credit for the headquarters credit for those same jobs.

Other features of the credit include (i) an annual reporting requirement by Revenue regarding the qualifying expenses for which a credit was claimed (classified by production property or compensation/wages), the number of people employed in the State with respect to credits claimed, and the total cost to the General Fund and (ii) a requirement that the taxpayer substantiate entitlement to the credit by providing and maintaining for inspection any information required by Revenue.

Part III: Enhance Sales Tax Benefits for Datacenters and Major Industrial Facilities

Under current law, certain industrial facilities and datacenters receive sales and use tax benefits for qualifying purchases. Effective July 1, 2010, this Part would make a number of changes. First, it would expand the definition of datacenter by expressly providing that a datacenter facility can be located on non-contiguous parcels of land that are network-linked and form part of the same operating unit of a company (the requirement for eligible internet datacenters to be located on a single parcel or contiguous parcels has been eliminated for alignment purposes), instead of being limited to facilities that were located on a single parcel of land or contiguous parcels of land. This would allow a taxpayer to aggregate the expenses at two distinct sites in order to meet investment thresholds. Second, the definition of eligible Internet datacenters would be expanded from Internet service providers and Web search portals to additionally include industries that publish/communicate text or media content by Internet to a web-based community. Finally, the bill would expand the types of industrial facilities that qualify for the sales and use tax refunds authorized in G.S. 105-164.14(j) on purchases of qualified

[3] Transferred jobs are defined in G.S. 105-129.87(e).

building materials, building supplies, fixtures, and equipment that become part of the real property at the industrial facility. The bill would add to the industries eligible for this tax benefit both paper-from-pulp manufacturing,[4] if the owner of the facility creates at least 200 additional jobs paying at least the average wage of the county (calculated using any job filled at least 1,600 hours during the calendar year), and turbine/turbine generator set units manufacturing.[5]

Part IV: Extend and Review Article 3J Tax Credits

Under current law, Article 3J for growing businesses is repealed for business activities that occur on or after 1/1/11. In addition, in order to qualify for a number of economic incentives[6] offered by the State, including Article 3J, a taxpayer must meet an environmental impact test. Effective January 1, 2011, this Part would extend the sunset for Article 3J to January 1, 2014, and would modify the environmental impact test.

Under various provisions, a taxpayer qualifies for certain economic incentives only if the taxpayer certifies that it has no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any DENR-implemented programs and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any DENR-implemented program within the last five years. There are two types of violations that the EPA enforces and that State enforce under EPA guidelines. These are civil and criminal violations with associated penalties. While Article 3J has a definition for what constitutes a "significant" violation, some confusion has arisen as to whether violations should be considered "significant" or "non-significant," and Revenue has interpreted the current language to make no distinction between civil and criminal violations or on the basis of whether the violation was knowing or knowing and willful. This Part of the bill would clarify that an environmental disqualifying event occurs when (i) a civil penalty is assessed by DENR for failure to abate or remediate a violation of any DENR program, (ii) a criminal penalty was imposed in connection with any DENR-implemented program, or (iii) DENR finds a taxpayer knowingly and willfully committed a violation of a DENR-implemented program or an assessment for damages to fish or wildlife is made or a judicial order for injunctive relief was issued in connection with a violation of any DENR-implemented program.[7] This is designed to ensure that minor violations do not inadvertently disqualify a taxpayer that would otherwise be eligible for a tax incentive and has been vetted with the Departments of Commerce and Revenue.

Finally, under current law, activities that occur in an agrarian growth zones get enhanced economic incentives. An agrarian growth zone is a zone that meets each of the following conditions: (i) it is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census, (ii) all of the area is located in whole within a county that has no municipality with a population in excess of 10,000, and (iii) every census tract and census block group that comprises the area has more than 20% of its population below the poverty level according to the most recent federal census. Effective January 1, 2011, this bill would make a technical change to what meets the definition of an agrarian zone by modifying the third requirement by allowing every census tract and census block group that comprises the area to also be adjacent to another census tract or census block group in the zone that has more than 20% of its population below the poverty level according to the

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[4] This industry manufactures or converts paper from pulp or pulp products or converts purchased sanitary paper stock or wadding into sanitary paper products.

[5] This industry manufactures turbines, other than aircraft, or compete turbine generator set units (including steam, hydraulic, gas, and wind).

[6] These incentives include site infrastructure development, JMAC (Job Maintenance and Capital Development Fund), and any tax incentive that incorporates, by reference, the environmental test set forth in Art. 3J.

[7] The first two apply only for the tax year in which the activity occurred; the last includes the current tax year as well as the prior two tax years.

most recent federal census and by requiring that the zone, as a whole, have more than 20% of its population below the poverty level according to the most recent federal census.

Part V: Extend Sunsets for Certain Tax Benefits for Economic Development

Under current law, a biodiesel producer was provided a tax credit equal to the per gallon excise tax paid on the biodiesel until taxable years beginning on or after January 1, 2010. In addition, the tax credit available against income or franchise tax liability for taxpayers who construct renewable fuel facilities and the sales tax refunds for certain fuel purchases by interstate passenger air carriers, professional motorsports racing teams, and motorsports sanctioning bodies are to be repealed as of January 1, 2011. This Part of the bill would extend each of these sunsets to January 1, 2014.

Part VI: Eco-Industrial Parks

This Part of the bill provides that any Eco-Industrial Park has a development tier one designation for purposes of economic development programs. An Eco-Industrial Park meets the following requirements (i) it has at least 100 developable acres, (ii) it is located in a county that is not subject to motor vehicles emissions inspections, (iii) each building in the park meets the energy-efficiency and water usage standards established in G.S. 143-135.37, and (iv) each business in the park is in a clean industry. If these requirements are met, the Eco-Industrial Park enjoys certain other favorable treatment with existing economic incentives. First, for purposes of the Job Development Investment Grant Program and the NC Green Business Fund, in selecting between applicants (JDIG) and projects in a priorty area (Fund), an applicant or a project in an Eco-Industrial Park has priority over comparable projects not in an Eco-Industrial Park. Also, with respect to the NC Green Business Fund and unlike with other projects, Commerce may neither set a cap on a grant nor require matching funds for a grant from the Fund for projects in an Eco-Industrial Park. Second, under current law, the tax credit available against income, franchise, or gross premiums tax liability for taxpayers investing in renewable energy property for nonresidential property has a ceiling of $2.5 million per installation. The bill would increase that limitation for renewable energy property for nonresidential property located in an Eco-Industrial Park to $5 million per installation. Third, under current law, a taxpayer that has qualified research expenses is allowed a credit equal to the percentage of the expenses ranging from 1.25% to 3.25% (North Carolina university research expenses get a credit equal to 20% of the expenses). The applicable percentage for expenses with respect to research performed in an Eco-Industrial Park would be 35% of the expenses.

Part VII: Sales Tax Exemption for Wood Chippers

Under current law, companies that produce wood chippers that are for use by out-of-state customers and that are immediately removed from North Carolina and are delivered to the customer's out-of-state location are required to collect sales tax for certain sales. This practice has, in practical effect, put these companies at a competitive disadvantage with similarly situated companies located in other States. These taxable sales included, *inter alia*, (i) where a customer's employee picks up the chipper at the company location using the customer's vehicle, (ii) where the customer pays a drive-away service driver to pick up the chipper at the company, and (iii) where the customer pays a drive-away service driver to pick up the chipper at the company using the customer's vehicle. These chippers are commercial units that are towed behind another vehicle and are assigned a vehicle identification number. Effective July 1, 2010, this bill would exempt the sale of all such units from sales tax.

Part VIII: Purchasing and Contract Changes to Benefit North Carolina Businesses

Under current law, the Secretary of Administration and State agencies are required, in purchasing or contracting for foods, supplies, materials, equipment, printing, or services, to give preference to products or services manufactured or produced in North Carolina or furnished by North Carolina citizens if the preference does not sacrifice price or quality. This Part of the bill would modify the bidding process for

State agencies, UNC system campuses and General Administration, and Community Colleges procuring supplies, materials, equipment, and other tangible personal property where the lowest bid that is responsible and responsive (i) is by a non-resident bidder and (ii) is within the match zone[8] of a resident bidder. If the two requirements are met, the resident bidder must be offered the option of matching the non-resident bidder's bid and be awarded the contract at the matched bid. If the lowest resident bidder declines to match, each other responsible and responsive resident bidder with a bid in the Match Zone must be offered, in turn, the option to match.

Under current law, if the total amount of a construction contract awarded for a project is greater than $300,000, each contractor or construction manager at risk with a contract greater than $50,000 must provide a performance and payment bond in accordance with G.S. 44A-26. This Part of the bill would increase the triggering amount for a construction contract awarded for a project from $300,000 to $500,000.

Effective July 1, 2010, this Part of the bill would establish, as part of the informal bidding process of State agencies, boards, commissions, and institutions for State construction contracts, certain benefits for resident bidders with gross revenues for its previous fiscal year of $1.5 million or less ("small resident bidders") in all contracts for construction or repair work expending at least $30,000 but less than the thresholds set in G.S. 143-129,[9] in public money. These benefits include (i) informal solicitation must include small resident bidders where practicable, (ii) the Department of Administration may identify projects likely to attract small resident bidder participation and restrict solicitation and award of contracts on those projects to such bidders, and (iii) the Department of Administration may waive any bonding requirements of Chapter 44A for contracts to for small project bidding.

Finally, this Part of the bill makes findings regarding the benefits of multiple award schedule contracts and encourages the Department of Administration to consider their use.

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[8] A resident's bid is within the Match Zone when it is within 5% or $10,000 (whichever is less) of the non-resident bidder's bid.

[9] Broadly, G.S. 143-129 applies where the estimated expenditure of public money is at least $500,000 for construction or repair or is at least $90,000 for the purchase of apparatus, supplies, materials, or equipment.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 8, 2010

TO: House Commerce Committee

FROM: Rodney Bizzell, Sandra Johnson, and Kristin Walker of the Fiscal Research Division

RE: PCS to H1973 Keeping North Carolina Competitive Act

FISCAL IMPACT ($ In Millions)

	Yes (X)	No ( )	No Estimate Available ( )		
REVENUES:	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**
Section 1–Film Credit	$0.0	-$2.4	-$56.3	-$53.8	-$53.8
Section 2–IDM Credits	*See Assumptions and Methodology*				
Section 3. –Datacenters	(8.9)	(13.7)	(10.0)	(5.6)	(0.6)
Section 4.–Art. 3J Changes	$0.0	-$5.4	-$12.1	-$24.2	-$36.3
Section 5.1–Renewable Fuel	*No significant impact*				
Section 5.2–Biodiesel Production	-$0.7	-$1.3	-$1.3	-$0.7	$0.0
Section 5.3–Passenger Air Carrier and Motorsports Aviation	$0.0	-$2.5	-$5.1	-$4.4	-$2.2
Section 6–Eco-Park	*No estimate available*				
Section 7–Woodchipper	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)
TOTAL	**($9.6)**	**($25.3)**	**($84.9)**	**($88.7)**	**($93.0)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC DOR; NC Department of Commerce

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY:
Section 1 of the bill makes the following changes to the film production credit:

- Increases the cap on the amount of credit per feature film from $7.5 million to $20 million;
- Removes the cap on expenses paid to highly compensated individuals that can be included as eligible expenses. Currently, compensation over $1 million paid to one individual is not considered an eligible expense;
- Allows employee fringe contributions and per diems to be included as eligible expenses;
- Includes all compensation for services performed in North Carolina as eligible expenses. Current law requires that only compensation on which income tax withholding payments are made is eligible;
- Includes employee fringe contributions as eligible expenses; and,
- Extends the sunset of the film credit by one year to January 1, 2015.

Section 2 of the bill establishes a tax credit for digital interactive media productions. The credit is equal to 15% of eligible expenses with a cap of $7.5 million or 50% of tax liability. Credits can be carried forward for eight years.

The Proposed Committee Substitute (PCS) also extends the sunsets for the following tax credits from January 1, 2011 to January 1, 2014: Article 3B credits for constructing renewable fuel facilities; the credit for biodiesel producers; and the Article 3J tax credit for growing businesses.

Section 3.1 amends GS 105-164.3(8e) to provide additional criteria for designating a facility as an eligible internet datacenter. The change also expands the sales and use tax exemption for machinery, equipment, and electricity sold to eligible internet datacenters under G.S. 105-164.13 (55).

Section 3.2 amends G.S. 105-164.14(j) making a facility eligible for an annual refund of sales and use taxes under the subsection if the facility primarily performs paper-from-pulp manufacturing or manufactures turbine and/or turbine generator set units, creates at least 200 additional jobs, and pays an average weekly wage equal to or greater than the average wage in the county. This refund would apply to taxes paid in purchasing building materials, supplies, fixtures, and equipment.

Section 3.3 amends G.S. 105-187.50 replacing the general sales and use tax rate applicable to property purchased for use in a datacenter with the 1%, $80 per article cap excise tax under Article 5F. The Article 5F excise tax applies to machinery and equipment purchased by an eligible internet datacenter.

Section 3.4 amends G.S. 105-187.51 C(d) extending the sunset for the 1%, $80 per article excise tax under Article 5F from July 1, 2013 to July 1, 2015.

Section 3 also provides that a facility owner loses eligibility and must forfeit all refunds if the facility fails to maintain the required number of created jobs.

Section 5.3 of the PCS also extends the sunsets of two sales tax incentives found under G.S. 105-164.14 (a1) and (l) from January 1, 2011 till January 1, 2014. Under G.S. 105-164.14 (a1), 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.

G.S. 105-164.14(l) authorizes sales and use tax refunds for aviation fuel used during motorsport events. A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing.

For both of the incentives a request for a refund must be in writing and must include any information and documentation the Secretary requires. The requests are due within six months after the end of the State's fiscal year.

Section 6 would create economic development incentives and favorable tax treatment for Eco-Industrial Parks.

Section 7 of this proposal exempts from the State sales and use tax wood chipping machinery. Machinery qualifies for the exemption if said equipment has an assigned seventeen-digit vehicle identification number (VIN) from the National Highway Transportation Safety Association.

ASSUMPTIONS AND METHODOLOGY:

Section 1: The impact of the proposed expansion of the film credit is based on analysis provided by the NC Department of Commerce. The analysis assumes that without the proposed expansion, baseline film production activity would include one episodic television production with $22 million in-state spending and five $10 million film productions with $6 million in-state spending. The proposed expansions are expected to generate additional film production activity.

The estimates assume the same current film activity, plus two $25 million productions, four $50 million productions and one $75 million production. The estimates assume that no individual is paid more the $1 million on the $10 million and $25 million productions. The Department used studio film budgets to determine the impacts of the $25 million, $50 million and $75 million productions and spending on fringe benefits, per diems and highly compensated individuals, which are included as eligible expenses under the bill.

The chart below provides the number and cost of films projected by the Department of Commerce.

Projected Film Production Spending ($millions)			
Total Production Spending	Total Qualified Spending	Number of Productions	Total Cost of Incentive
$75	$49.8	1	$12.5
$50	$38.6	4	$38.6
$25	$13.2	2	$6.6
$10	$4.7	5	$5.8
$44	$23.5	1	$5.9
Total Cost			**$69.4**
Source: NC Department of Commerce			

The chart below provides the projected fiscal year impacts of the credit expansion based on the expected production cycles. The impact of film activity related to current law is not included. The impact also factors in the credit add-back; North Carolina requires the value of the tax credit to be added back to taxable income. The analysis assumes that the add-back will be taxed at an average rate of 7 percent.

Net Fiscal Impact of Film Production Credit Changes by Fiscal Year ($millions)					
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Additional Cost of Credit	$0.0	$2.6	$60.5	$57.9	$57.9
Credit Add-back	$0.0	$0.2	$4.2	$4.1	$4.1
Net Fiscal Impact	**$0.0**	**$2.4**	**$56.3**	**$53.8**	**$53.8**

Section 2: This section would provide a 15% tax credit for eligible expenses related to the production of digital interactive media productions. The credit is taken against the income tax; the maximum credit for a single production is the lesser of 50 percent of tax liability or $7.5 million. A credit of $5,000 per job is available for companies that establish a headquarters in the state and create a minimum number of jobs.

Based on discussions with industry representatives, there are approximately thirty companies in North Carolina that would potentially qualify for the credit. Production cycles average from one to three years and expenses range from $200,000 to several million per production.

A simulation was developed to explore the potential fiscal impact of the credit. Because of the duration of the production cycle, it is unexpected that any productions would qualify for the credit in FY 2010-11. The simulation assumes a total of $30 million annually (an average of $1 million per company) in qualified expenditures beginning in FY 2011-12 with credits taken evenly over a period of 9 years (initial tax years, plus 9 carryforward years).

In addition, the simulation assumes that 200 jobs qualify for the jobs credit each year. Based on these assumptions, the following fiscal impacts result:

Interactive Digital Media Fiscal Impacts Based on Simulation				
FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
$0.0	-$0.5	-$1.75	-$2.25	-$2.75

Section 3: Using data provided by the North Carolina Department of Commerce (Commerce), Fiscal Research estimates that enacting Section 3 of the PCS to 1973 will reduce General Fund availability by $8.85 million in FY 10-11 and by $ 13.70 million in FY 11-12. The data from Commerce represents the most accurate information currently available. However, if enacted, the North Carolina Department of Revenue will have data on the actual value of the sales and use tax refund created in Section 4 of the bill and the tax incentive available in Section 6 one year after the incentive has been in effect. The estimate above represents the fiscal impact of three types of tax incentives. The following paragraphs describe each incentive in detail.

Section 3.1: The tax incentive, amending the definition of an eligible internet datacenter, expands the types of companies eligible for a sales tax exemption on machinery and electricity purchases. As shown in table below, the electricity and machinery tax exemption totals $8.2 million in the 2010-11 fiscal year. If enacted, eligible manufacturers will receive a sales and use tax exemption certificate, which will exempt all eligible internet datacenter purchases from the sales tax. Since exempted purchases are not reported to the Department of Revenue, the true cost of this tax incentive will be unverifiable after enactment.

Sales and Use Tax Exemption for Machinery and Equipment					
Fiscal Year	**Qualified Investment (Machinery and Equipment)**	**Cost Estimate per Fiscal Year (4.75-5.75% Rate)**	**Qualified Investment (Electricity)**	**Cost Estimate per Fiscal Year (3% Rate)**	**Total Cost Estimate per Fiscal Year**
2010-11	$148,750,000	$7,864,063	$10,725,000	$321,750	$8,185,813
2011-12	$197,812,500	$10,085,156	$21,450,000	$643,500	$10,728,656
2012-13	$125,000,000	$6,587,500	$26,325,000	$789,750	$7,377,250
2013-14	$65,000,000	$3,737,500	$31,200,000	$936,000	$4,673,500
2014-15	$0	$0	$21,450,000	$643,500	$643,500
Total	**$536,562,500**	**$28,274,219**	**$111,150,000**	**$3,334,500**	**$31,608,719**

By expanding the definition of eligible Internet datacenters, the bill also expands the types of facilities entitled to a sales and use tax exemption on electricity purchases. Commerce estimates that the definition change will reduce General Fund availability by $321,750 during the 2010-11 fiscal year and by $600,000 to $900,000 in subsequent years. Table 1 provides additional detail. Under current law, these companies are subject to the general sales tax rate on electricity of 3%. Modifying the definition under G.S. 105-164.3 expands the number of facilities eligible for sales and use tax exemptions under G.S. 105-164.13(55). If successful, the newly attracted companies will create an additional 38-60 jobs at an approximate wage of $50,000 per job. These companies are expected to invest more than $830 million in industrial related property (i.e. buildings and machinery).

Section 3.2: According to Commerce, providing sales and use tax incentives to construct facilities utilized in paper-from-pulp, turbine, or turbine generator set unit manufacturing will generate refunds of $1.1 million during the 2011-10 fiscal year. The Department of Revenue, if the law is enacted, will verify the true cost of this tax incentive through the processed refunds beginning in the year following enactment.

The following table describes the amount of qualified investments and expected sales and use tax refunds per fiscal year. Purchases made during the 2010-11 fiscal year are reflected in the 2011-12 refunds. Companies eligible for sales and use tax incentives under G.S. 105-164.14 (j) apply and receive tax refunds six months after the end of the fiscal year in which the purchases are made. The sales tax refund provided under G.S. 105-164.14 (j) applies to purchases made on or before January 1, 2013. The January 2013 sunset limits the fiscal impact of this statutory change to three fiscal years.

Sales and Use Tax Refund for the Construction of Manufacturing Plants		
Fiscal Year	**Qualified Investment (Construction Materials)**	**Cost Estimate per Fiscal Year (Refunds Lag Purchases by a Fiscal Year)**
2010-11	$19,750,000	$0
2011-12	$15,750,000	$1,135,625
2012-13	$5,500,000	$905,625
2013-14	$0	$316,250
2014-15	$0	$0
Total	**$41,000,000**	**$2,357,500**

If the recruitment efforts are successful, the $2.36 million tax incentive will create1,025 jobs and generate $348 million in industrial investments. The average wage in the paper manufacturing facility is estimated at $37,897 per job. Wages at the turbine manufacturer are expected to pay an average annual wage of $64,400 per job.

Section 3.3 and Section 3.4: Amends G.S. 105-187.51C replacing the general sales and use tax rate applicable to property purchased for use in a datacenter with the 1%, $80 per article cap excise tax under Article 5F. The tax incentive, amending the definition of an eligible datacenter, expands the types of companies eligible for a sales tax exemption on machinery. Machinery purchased by a datacenter as tax exempt under Article 5 is subject to the 1%/$80 excise tax under Article 5F. For each piece of machinery purchased, companies must remit 1% of the purchase price to the Department of Revenue.

Tax liability is capped at $80 per piece of equipment. As illustrated in the Table below, Commerce estimates that $12.5 million in equipment purchases will be made during the 2010-11 fiscal year. The fiscal impact of exempting this equipment from the sales tax equals the purchase price of the machinery, multiplied by 4.75% (the North Carolina State sales and use tax rate less 1%). This number is then multiplied by 1.25. The 25% increase in forgone sales tax revenue represents the fiscal impact of the $80 cap per piece of machinery. For each piece of machinery with a purchase price exceeding $1,391, a cap of $80 per piece of equipment is imposed.

Datacenter Machinery and Equipment under Article 5F

Fiscal Year	Qualified Investment (Machinery and Equipment)	Cost Estimate per Fiscal Year (1%/$80 Tax Rate)
2010-11	$12,500,000	$664,063
*2011-12	$37,500,000	$1,835,938
2012-13	$37,500,000	$1,757,813
2013-14	$12,500,000	$585,938
2014-15	No Data	$0
Total	**$100,000,000**	**$4,843,750**

*Sales tax rate changes from 5.75% to 4.75% effective July 1, 2011. The tax for purchases made in the later portion of 2010-11 will be remitted in FY 2011-12.

The first table used to describe Section 3.1 of this bill also reflects a reduction in the State sales and use tax rate of 1%, which is set to take effect July 1, 2011. Purchases made on or after that date will only be subject to a 4.75% sales and use tax rate. The sales and use tax exemption for mill machinery purchased by an eligible datacenter sunsets on July 1, 2015.

Should the bill become law, the Department of Revenue will be able to verify the tax incentive's true cost through self-reported information provided by the eligible companies. Under the 1%/$80 excise tax, companies are exempt from the sales tax by the seller. The businesses (the exempt purchasers) then self-report to the Department the amount of machinery and equipment purchased and remit the due tax. The $4.8 million sales and use tax incentive for datacenters is expected to create 20-25 new jobs at an average wage of $60,000 per job.

Section 4: Extends the Article 3 J credits from January 1, 2011 to January 1, 2014. The Article 3J Credits for Growing Businesses replaced the William S. Lee Act credits in 2007 and includes credits for creating jobs, investing in business property and investing in real property. The credits can be used to off-set up to 50 percent of the taxpayer's state income and/or franchise tax liability and must be taken in four (jobs and business property) or seven (real property) annual installments. Unused credits can be carried forward for five years for the jobs and business investment credits. The real property investment credits can be carried forward for fifteen years.

The annual impact of Article 3J is based on the two reports available from the Department of Revenue. The 2009 report provides credits generated and taken for the first year of Article 3J. The amount of activity for the first year is assumed to be relatively low because taxpayers were allowed for that year only to elect to take either Bill Lee or Article 3J credits. Therefore, the credits generated from the 2010 report are considered to be more reflective of future activity.
For purposes of this analysis, a simulation was developed to estimate the potential impact of the Article 3J extension. The simulation assumes that credits continue to be generated each year at the same level as in the 2010 report. The assumption for the percentage of credits taken each year is based on the percentage taken in the 2009 report (data for credits taken in the 2010 report is not yet available). Credits taken represented 10.7% of credits generated for that year; thus, the installments for each tax year are calculated by multiplying the credits generated (based on the 2010 report) by the percentage taken ($112,579,981 * 10.7% = 12,082,452). The annual impacts for each fiscal year of the credit extension are calculated by adding the credit installments that would be taken each year as shown in the table below.

The Article 3J extension would have no impact on revenues in FY 2010-11 because taxpayers cannot take any credits until the tax year following the year they are generated. Credits would be generated beginning in calendar year 2011 and would be taken for tax year 2012. FY 2011-12

revenues would be impacted by taxpayers who reduce April and June estimated payments in 2012. This impact is estimated to be 45% of the full-year impact of the credit extension.

Fiscal Impact of Art. 3J Credit Extension by Fiscal Year ($millions)					
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Tax Year					
2012	$0.0	$5.4	$12.1	$12.1	$12.1
2013	$0.0	$0.0	$0.0	$12.1	$12.1
2014	$0.0	$0.0	$0.0	$0.0	$12.1
Total Impact	**$0.0**	**$5.4**	**$12.1**	**$24.2**	**$36.3**

Section 5.1: This section extends the sunset for the credit for constructing renewable fuel facilities from January 1, 2011 to January 1, 2014. The Department of Revenue Tax Expenditure Report projects no significant impact for this credit in FY 2009-10. FRD is aware of an ethanol plant, which opened in 2010 and may qualify for the credit for constructing renewable fuel processing facilities; however, because the plant is being completed before the existing sunset, any fiscal impact would be realized under current law. As a result, the extension of the credit is expected to have no significant impact.

Section 5.2: This section extends the sunset for the tax credit for biodiesel producers from January 1, 2011 to January 1, 2014. The credit is equal to the per gallon excise tax paid under Article 36C of Chapter 105. The credit does not apply to biodiesel blend. According to the Department of Revenue Tax Expenditure Report, there are 8 biodiesel producers in North Carolina and annual production is assumed to be 4 million gallons per year. Based on a projected motor fuels tax rate of 31.7 cents per gallon, the credit is estimated to cost $1.3 million annually.

The bill would sunset the credit in January 2014. This would result in a partial year impact for FY 2013-14, and no impact for FY 2014-15.

Section 5.3

Extending the sunsets for sales and use tax incentives found under G.S. 105-164.14 (a1) and (l) till January 1, 2014 will reduce General Fund availability by $0.0 in FY 2010-11 and by $2.5 million in FY 2011-12. For each full fiscal year the refunds are extended, the incentives reduce General Fund availability by $5.0 to $4.0 million. The Department between 2006 and 2009 awarded an average of $ 3.8 million in sales tax refunds under G.S. 105-164.14(a1), the aviation fuel refund. During that same period, G.S. 105-164.14(l), the sales tax refund for aviation fuel used in motorsports events, generated $0.1 million in tax refunds.

The two refunds on average equal a total of $3.9 million per fiscal year. After earmarking this figure for inflation and changes in the sales and use tax rate, purchases made January thru June 2010 associated with the two incentives are expected to generate $2.5 million in refunds. Eligible companies can apply for a refund of the sales and use tax paid January 2010 thru June 2010 in the first six months of the 2010-11 fiscal year, July thru December 2010. Purchases made July 2010 through June 2011 are expected to generate approximately $5.1 million in sales tax refunds. These refunds will be awarded during the 2012-13 fiscal year.

Section 6

Section 6.1 would designate certain Eco-Industrial Parks as Tier One. If such a Park were located in a Tier Two or Three County, this new designation would change their status and requirements for grants from the Job Development Investment Grant (JDIG), the Industrial Fund, the Utility Fund, and the Article 3J tax credits for growing businesses. At this point, it is not known how many such parks might exist and where they are located, so Fiscal Research cannot provide an estimate as to the potential impact. It is expected that there would be no impact in FY 10-11 and FY 11-12.

Section 6.2 requires that the Green Business Fund give priority to projects in an Eco-Industrial Park. Additionally it allows Commerce to create a cap on the grant size and allows Commerce to require matching funds for the grant, except for those grants given to Eco-Industrial Parks. This section would change the way Green Business Fund grants are prioritized but will not have an impact on appropriations.

Section 6.3 gives priority for JDIG awards to projects that are Eco-Industrial Parks. This section would change the way JDIG grants are prioritized but will not have an impact on appropriations.

Section 7 : Fiscal Research estimates that exempting VIN-assigned wood chippers would reduce General Fund availability by $ 32,000 in the 2010-11 fiscal year and by $28,000 in subsequent years. This information is based on the fiscal impact of a similar tax credit in Oregon designed to reduce pollution caused through forestry-linked burning. The fiscal impact of exempting wood-chippers in North Carolina was calculated by: 1) estimating the value of industrial wood chippers purchased in Oregon, 2) apportioning Oregon's wood-chipper purchases to North Carolina, and 3) calculating the State and local impact of this bill using the sales and use tax rates effective under current law.

Step 1: Estimate the Value of Wood Chippers Purchased in Oregon:
Designed as a pollution control initiative, Oregon offers tax credits equal to 35% of the purchase price of large industrial wood chippers. In reviewing data provided by the Oregon Environmental Quality Commission, purchasers of industrial wood chippers valued at $696,000 apply annually for the tax credit. Due to the fact that the tax credit requires an application process, Fiscal estimates that the $696,000 only represents a portion, 80%, of Oregon's total qualified purchases. Total purchases in Oregon are estimated at $870,000 ($696,000/80%). While the utilization rate of the tax credit is unknown, North Carolina Department of Revenue data highlights that the application process hinders a portion of eligible taxpayers from applying for applicable tax refunds and credits. Under an exemption program, no application process would be necessary, automatically excluding all VIN-assigned wood chippers from the sales tax.

Step 2: Apportioning Wood-Chipper Purchases to North Carolina
Fiscal estimated the number of wood chipper purchases made in North Carolina using 2007 Economic Census information on the wood product industry. According to the 2007 Economic Census, capital outlays by the Oregon wood product industry represented 7.6% of national wood product capital outlay expenditures. North Carolina's wood product industry's capital outlays represented 4.8% of relevant national expenditures. Applying this ratio to wood chipper purchases, North Carolina's wood chipper purchases equaled $549,887, or 63.2% Oregon's purchases for the 2008-09 fiscal year ($870,000 * 4.8%/7.6%).

Step 3: Calculating the fiscal impact using forthcoming sales and use tax rates
Using the estimate calculated in Step 2, $549,887, Fiscal applied the 2009-10 and 2010-11 fiscal year inflation rates, quantifying North Carolina's 2010-11 fiscal year qualified wood chipper purchases at $564,404. The current State sales tax rate of 5.75% and local rate of 2% was then applied equaling a $32,000 reduction in General Fund availability. The fiscal estimate also accounts for the forthcoming percentage point State sales tax rate reduction effective July 1, 2011.

SOURCES OF DATA:
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TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1973
PROPOSED COMMITTEE SUBSTITUTE H1973-PCS11140-MCx-30

Short Title: Keeping North Carolina Competitive Act. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE COMPETITIVENESS OF THE CREDIT FOR PRODUCTION COMPANIES; TO ENACT TAX INCENTIVES FOR INTERACTIVE DIGITAL MEDIA COMPANIES; TO EXPAND THE TYPES OF DATACENTERS ELIGIBLE FOR PREFERENTIAL TAX TREATMENT; TO INCREASE THE NUMBER OF INDUSTRIES ELIGIBLE FOR SALES TAX REFUNDS ON BUILDING MATERIALS FOR MAJOR INDUSTRIAL FACILITIES; TO EXTEND AND EXPAND TAX CREDITS FOR GROWING BUSINESSES; TO EXTEND SUNSETS ON EXPIRING ECONOMIC DEVELOPMENT TAX BENEFITS; TO PROVIDE ECONOMIC DEVELOPMENT BENEFITS FOR PROJECTS LOCATED IN ECO-PARKS; TO PROVIDE A SALES TAX EXEMPTION FOR CERTAIN WOOD CHIPPERS; AND TO MAKE CHANGES TO PURCHASING AND CONTRACT LAWS.

The General Assembly of North Carolina enacts:

PART I: EXPAND TAX CREDITS FOR PRODUCTION COMPANIES

SECTION 1.1. G.S. 105-130.47 reads as rewritten:

"**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

~~(1) Highly compensated individual. – An individual who 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 does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage 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 following amounts spent in this State by a production company in connection with a ~~production, less the amount in excess of one million dollars ($1,000,000) paid to a highly compensated individual:~~production:

a. Goods and services leased or 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 ~~on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.~~for services performed in this State.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. 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. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.~~

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the

Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed ~~seven~~ twenty million ~~five hundred thousand~~ dollars ~~($7,500,000).~~($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on or after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Division of Tourism, Film, and Sports Development in the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Division. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2014."

SECTION 1.2. G.S. 105-151.29 reads as rewritten:

"**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

~~(1) Highly compensated individual. An individual who 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 does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage 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 following amounts spent in this State by a production company in connection with a ~~production, less the amount paid in excess of one million dollars ($1,000,000) to a highly compensated individual:~~production:

a. Goods and services leased or 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 ~~on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.~~for services performed in this State.

c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.

d. Employee fringe contributions, including health, pension, and welfare contributions.

e. Per diems, stipends, and living allowances paid for work being performed in this State.

(5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

~~(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. 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. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.~~

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed ~~seven~~ twenty million ~~five hundred thousand~~ dollars ~~($7,500,000).~~($20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is political advertising.

(2) It is a television production of a news program or live sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was taken.

(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits taken.

(4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on and after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Division of Tourism, Film, and Sports Development in the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Division. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2014."

SECTION 1.3. The General Assembly finds that cameras, film, and props or building materials used in the construction of sets which are used in the actual filming of movies for sale, lease, or rental and chemicals and equipment used to develop and edit film which is used to produce release prints are not taxable under Article 5F of Chapter 105 of the General Statutes and are therefore subject to sales and use tax under Article 5 of Chapter 105 of the General Statutes unless another exemption applies.

SECTION 1.4. Section 1.3 of this act becomes effective July 1, 2010. The remainder of this Part is effective for taxable years beginning on or after January 1, 2010.

PART II: CREATE TAX CREDITS FOR PRODUCERS OF INTERACTIVE DIGITAL MEDIA

SECTION 2.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.
"Interactive Digital Media.

"**§ 105-129.105. Definitions.**

The following definitions apply in this Article:

(1) Company headquarters. – Defined in G.S. 105-129.81.

(2) 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.

(3) Gold master. – The version of interactive digital media released to a manufacturer.

(4) Interactive digital media. – Products that are intended for commercial use or distribution and that satisfy each of the conditions listed in this subdivision. The term also includes interactive digital platforms and engines. The term does not include products that are interpersonal communications services such as videoconferencing, wireless communications, text-based channels, or chat rooms.

a. The product is produced for distribution on electronic media, including file downloads over the Internet.

b. The product contains a computer-controlled virtual universe with which users may interact in order to achieve a goal.

c. The product contains an appreciable amount of at least three of the five following types of data: text, sound, fixed images, animated images, and 3D geometry.

(5) Qualifying expenses. – The sum of the total amount spent in this State for the following by a producer of interactive digital media in connection with the production of interactive digital media:

a. Production property purchased or leased.

b. Compensation and wages for services performed in this State.

c. Employee fringe contributions, including health, pension, and welfare contributions.

d. Per diems, stipends, and living allowances paid for work being performed in this State.

(6) Production. – A project to create interactive digital media from the time of preproduction to the creation of a gold master or the completion of the interactive digital media. The development of an interactive digital platform or engine is a separate, single production.

(7) Production property. – Tangible personal property and intangible property that is directly used in the production of interactive digital media. The term includes such items as software, computer code, image files, music files, scripts and plays, concept mock-ups, software tools, and testing procedures.

"**§ 105-129.106. Administration; limitations; sunset.**

(a) Minimum Standards. – A taxpayer is eligible for the credits allowed in this Article if it satisfies the requirements of G.S. 105-129.83(c), (d), (e), (f), and (g) relating to wage

standard, health insurance, environmental impact, safety and health programs, and overdue tax debts, respectively.

(b) Allocation. – A credit allowed under this Article may be taken against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 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 first claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax.

(c) Cap. – A credit allowed under this Article may not exceed fifty percent (50%) of the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, 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 against the tax for the taxable year. Any unused portion of a credit allowed in this Article may be carried forward for the succeeding eight years.

(d) Limitations. – A taxpayer that claims or has claimed a credit under this Article with respect to a facility is not eligible to receive a grant under Part 2G of Article 10 of Chapter 143B of the General Statutes (Job Development Investment Grant Program) or Part 2H of Article 10 of Chapter 143B of the General Statutes (One North Carolina Fund).

(e) Sunset. – This Article is repealed for taxable years beginning on or after January 1, 2014.

"**§ 105-129.108. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.109. Reports.**

The Department must publish by May 1 of each year the following information, itemized by credit and taxpayer, for the 12-month period ending the preceding December 31:

(1) The qualifying expenses for which a credit was claimed, classified by whether the expenses were production property or compensation or wages.
(2) The number of people employed in the State with respect to credits claimed.
(3) The total cost to the General Fund of the credits claimed.

"**§ 105-129.110. Production credit.**

(a) Credit. – A taxpayer that has qualifying expenses of at least one hundred thousand dollars ($100,000) with respect to an interactive digital media production is allowed a credit equal to fifteen percent (15%) of all qualifying expenses of the taxpayer for which the taxpayer has not already claimed a credit under this Article. 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.

(b) Limitations. – The amount of credit allowed under this section with respect to a production may not exceed seven million five hundred thousand dollars ($7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

(1) It is gambling or casino games.
(2) It is a project done for academic credit.
(3) It is a production that is developed internally by the taxpayer for internal use.
(4) It is political advertising.
(5) It contains material that is obscene, as defined in G.S. 14-190.1.
(6) It is an Internet site that is primarily static and primarily designed to provide information about one or more persons, businesses, companies, or firms.

(c) No Double Credit. – A taxpayer that claims a credit under this section may not also claim a credit under Article 3J of this Chapter with respect to jobs whose compensation or wages are included in the calculation of the credit under this section or with respect to business property, the cost of which is included in the calculation of the credit under this section.

"**§ 105-129.111. Headquarters credit.**

(a) Eligibility. – A taxpayer that is primarily engaged in the production of interactive digital media is eligible for a credit under this section with respect to a company headquarters if the taxpayer creates at least 20 new full-time jobs at the company headquarters within a 24-month period and maintains those jobs for at least three years. A taxpayer that meets this job creation requirement is eligible for credits under this section with respect to jobs created during the three taxable years beginning with the year in which the 24-month period in which the job creation requirement is satisfied begins. A taxpayer that creates an additional 20 new full-time 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 20 new full-time 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. A job that is a transferred job, as defined in G.S. 105-129.87(e), is not a new job for purposes of this Article.

(b) Credit. – A taxpayer that satisfies the eligibility requirement of subsection (a) of this section and has qualifying expenditures related to the production of interactive digital media in this State during the taxable year is eligible for a credit for each new full-time job created at the company headquarters. The credit is equal to five thousand dollars ($5,000) for each new full-time job. The entire credit is taken in the taxable year in which the job is created.

(c) Calculation. – The number of new jobs a taxpayer creates or maintains during the taxable year is determined by subtracting the average number of full-time jobs 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 jobs the taxpayer has in this State during the taxable year.

(d) Forfeiture. – A taxpayer forfeits a credit allowed under this section if the taxpayer fails to maintain the job for at least three years. A taxpayer 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. 105-241.21, 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.

(e) Limitations. – The maximum cumulative credit that may be claimed by a taxpayer under this section is five hundred thousand dollars ($500,000).

(f) No Double Credit. – A taxpayer that claims a credit under this section may not also claim a job creation credit under Article 3J of this Chapter with respect to the same job."

SECTION 2.2. If House Bill 1880, 2009 General Assembly, becomes law, then G.S. 105-129.109, as enacted by this act, reads as rewritten:

"**§ 105-129.109. Reports.**

The Department ~~must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information, itemized by credit and ~~taxpayer, for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The qualifying expenses for which a credit was claimed, classified by whether the expenses were production property or compensation or wages.

(2) The number of people employed in the State with respect to credits claimed.

(3) The total cost to the General Fund of the credits claimed."

SECTION 2.3. This part is effective for taxable years beginning on or after January 1, 2011, and applies to productions commenced on or after that date.

PART III: ENHANCE SALES TAX BENEFITS FOR DATACENTERS AND MAJOR INDUSTRIAL FACILITIES

SECTION 3.1. G.S. 105-164.3 reads as rewritten:

"The following definitions apply in this Article:

...

(5c) Datacenter. – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The facility may be comprised of a structure or series of structures located or to be located (i) on a single parcel of land, (ii) on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility, or (iii) on noncontiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility but only if the structures located thereon are linked through fiber optic or similar connection and form part of the same operating unit of a company. The following definitions apply in this subdivision:

a. Concurrently maintainable. – Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

b. Multiple distribution paths. – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

c. Redundant capacity components. – Components beyond those required to support the computer equipment.

...

(8e) Eligible Internet datacenter. – A datacenter 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.~~one or more of the following:

1. Providing clients access to the Internet and related services. Related services may include Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity. The business may provide local, regional, or national coverage for clients or provide backbone services, other than telecommunications carriers, for other Internet service providers. The business must have the equipment and telecommunication network access required for a point-of-presence on the Internet.

2. Publishing or communicating or both of one or more of textual, audio, or video content of general or specific interest to or within a Web-based community found on the Internet exclusively and not in a traditional, non-Internet version.

3. Operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. The business may provide additional Internet services, including e-mail, connections to other Web sites, auctions, news, or other content, or may serve as a home base for Internet users.

~~b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.~~

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to 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 3.2. 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.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets all of the following conditions:

...

e. If the facility is primarily engaged in paper-from-pulp manufacturing, the owner of the facility creates at least 200 additional jobs, and the business pays an average weekly wage at the facility equal to or greater than the average wage of the county. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.

(3) Industries. – This subsection applies to the following industries:

...

i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing means an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

o. Turbine and turbine generator set units manufacturing. – Turbine and turbine generator set units manufacturing means an industry primarily engaged in manufacturing turbines (except aircraft) or complete turbine generator set units, such as steam, hydraulic, gas, and wind.

(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 or fails to maintain the minimum number of jobs created 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. 105-241.21, 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.

...."

SECTION 3.3. G.S. 105-187.50(2) reads as rewritten:

"**§ 105-187.50. Definitions.**

The definitions in G.S. 105-164.3 apply in this Article. In addition, the following definitions apply in this Article:

(1) Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.

(2) Eligible datacenter. – A datacenter that satisfies each of the following conditions:

a. Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.

b. The Secretary of Commerce has made a written determination of the following:

1. For ~~facilities~~ datacenters that are located entirely in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars ($150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

2. For ~~facilities~~ datacenters that are not located entirely in a development tier one area at the time of application for the written determination, that at least three hundred million dollars ($300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

c. The ~~facility~~ datacenter satisfies the wage standard and health insurance requirements of G.S. 105-129.83."

SECTION 3.4. G.S. 105-187.51C(d) reads as rewritten:

"(d) Sunset. – This section expires for sales occurring on or after July 1, ~~2013.~~2015."

SECTION 3.5. This part becomes effective July 1, 2010, and applies to sales and purchases made on or after that date.

PART IV: EXTEND AND REVISE TAX CREDITS FOR GROWING BUSINESSES

SECTION 4.1. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2011.~~2014."

SECTION 4.2. G.S. 143B-437.010(a) reads as rewritten:

"(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area that meets all of the following conditions:

(1) It is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census.

(2) All of the area is located in whole within a county that has no municipality with a population in excess of 10,000.

(3) Every census tract and census block group that comprises the area either has more than twenty percent (20%) of its population below the poverty level or is adjacent to another census tract or census block group in the zone that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(4) The zone as a whole has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census."

SECTION 4.3. G.S. 105-129.81 is amended by adding a new subdivision to read:

"(9a) Environmental disqualifying event. – Any of the following occurrences:

a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by the Department of Environment and Natural Resources for a failure to abate or remediate a violation of any program administered by the Department.

b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:

1. A finding was made by the Department of Environment and Natural Resources that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.

2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.

3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.

c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources."

SECTION 4.4. G.S. 105-129.83(e) and (i) read as rewritten:

"(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.~~there has not been a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event. For the purposes of this section, a 'final determination unfavorable to the taxpayer' occurs when there is no further opportunity for the taxpayer to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary of Environment and Natural Resources shall provide an annual report to the Department listing all environmental disqualifying events for which a final determination unfavorable to the taxpayer was made in the prior calendar year and shall provide the name of the taxpayer involved and the date that the disqualifying event occurred.

...

(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. A taxpayer forfeits a credit previously allowed under this Article if a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event is made that is applicable to the year in which the activity occurred 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. 105-241.21, 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."

SECTION 4.5. G.S. 143B-437.02(g) reads as rewritten:

"(g) Environmental Impact. – A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, the business ~~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 must notify the Department of Commerce 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.~~satisfies the environmental impact standard under G.S. 105-129.83."

SECTION 4.6. G.S. 143B-437.012(h) reads as rewritten:

"(h) Environmental Impact. – A business is eligible for consideration for a grant under this section only if the business ~~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 three years with respect to the location for which the grant is made. For the purposes of this subsection, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).~~certifies that, at the time of the application, the business satisfies the environmental impact standard under G.S. 105-129.83."

SECTION 4.7. This part is effective January 1, 2011, and applies to taxable years beginning on or after that date.

PART V: EXTEND EXISTING TAX BENEFITS FOR ECONOMIC DEVELOPMENT

SECTION 5.1. G.S. 105-129.16D(d) reads as rewritten:

"**§ 105-129.16D. Credit for constructing renewable fuel facilities.**

...

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, ~~2011.~~2014."

SECTION 5.2. G.S. 105-129.16F(b) reads as rewritten:

"**§ 105-129.16F. Credit for biodiesel producers.**

...

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, ~~2010.~~2014."

SECTION 5.3. G.S. 105-164.14 reads as rewritten:

"**§ 105-164.14. Certain refunds authorized.**

...

(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, ~~2011.~~2014.

...

(l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed for purchases made on or after January 1, ~~2011.~~2014.

...."

SECTION 5.4. This part is effective when it becomes law.

PART VI: CREATE ECONOMIC DEVELOPMENT INCENTIVES FOR ECO-PARKS

SECTION 6.1. G.S. 143B-437.08 is amended by adding a new subsection to read:

"(j) Exception for Eco-Industrial Park. – An Eco-Industrial Park has a development tier one designation. An Eco-Industrial Park is an industrial park that the Secretary of Commerce has certified meets the following requirements:

(1) It has at least 100 developable acres.

(2) It is located in a county that is not required under G.S. 143-215.107A to perform motor vehicles emissions inspections.

(3) Each building located in the industrial park is constructed in accordance with energy-efficiency and water-use standards established in G.S. 143-135.37 for construction of a major facility.

(4) Each business located in the park is in a clean-industry sector according to the Toxic Release Inventory by the United States Environmental Protection Agency."

SECTION 6.2. G.S. 143B-437.4 reads as rewritten:

"**§ 143B-437.4. NC Green Business Fund ~~established as a special revenue fund.~~and grant program.**

(a) ~~Establishment.~~ Fund. – The NC Green Business Fund is established as a special revenue fund in the Department of Commerce, and the Department shall be responsible for administering the Fund.

(b) Purposes. – Moneys in the NC Green Business Fund shall be allocated pursuant to this subsection. The Department of Commerce shall make grants from the Fund to private businesses with less than 100 employees, nonprofit organizations, local governments, and State agencies to encourage the expansion of small to medium size businesses with less than 100 employees to help grow a green economy in the State. Moneys in the NC Green Business Fund shall be used for projects that will focus on the following three priority ~~areas:~~areas listed in this subsection. In selecting between projects that are within a priority area, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park. The priority areas are:

(1) To encourage the development of the biofuels industry in the State. The Department of Commerce may make grants available to maximize development, production, distribution, retail infrastructure, and consumer purchase of biofuels in North Carolina, including grants to enhance biofuels workforce development.

(2) To encourage the development of the green building industry in the State. The Department of Commerce may make grants available to assist in the development and growth of a market for environmentally conscious and energy efficient green building processes. Grants may support the installation, certification, or distribution of green building materials; energy audits; and marketing and sales of green building technology in North Carolina, including grants to enhance workforce development for green building processes.

(3) To attract and leverage private-sector investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses, including grants to enhance workforce development in such businesses.

(c) Cap and Matching Funds. – The Department of Commerce may set a cap on a grant from the NC Green Business Fund and may require a private business to provide matching funds for a grant from the Fund. A grant to a project located in an Eco-Industrial Park certified under G.S. 143B-437.08 is not subject to a cap or a requirement to provide matching funds."

SECTION 6.3. G.S. 143B-437.52(b) reads as rewritten:

"(b) ~~Cap.~~ Cap and Priority. – The maximum number of grants the Committee may award in each calendar year is 25. In selecting between applicants, a project that is located in an Eco-Industrial Park certified under G.S. 143B-437.08 has priority over a comparable project that is not located in a certified Eco-Industrial Park."

SECTION 6.4. G.S. 105-129.16A(c)(1) reads as rewritten:

"(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. – A ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to renewable energy property that is placed in service outside an Eco-Industrial Park certified under G.S. 143B-437.08 and is for any purpose other than residential. A ceiling of five million dollars ($5,000,000) per installation applies to renewable energy property that is placed in service in a certified Eco-Industrial Park and is for any purpose other than residential."

SECTION 6.5. G.S. 105-129.55 reads as rewritten:

"**§ 105-129.55. Credit for North Carolina research and development.**

~~(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.~~section. Only one credit is allowed under this ~~subsection~~ section with respect to the same expenses. If more than one subdivision of this ~~subsection~~ section 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 more than one subdivision ~~(2)~~ of this ~~subsection and the remainder qualifies under subdivision (3) of this subsection,~~ section, 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 and one-quarter percent (3.25%).

(2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).

(2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).

(2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).

(3) Other research. – For expenses not covered under another subdivision ~~(1) or (2)~~ of this ~~subsection,~~section, 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	1.25%
$50 million	$200 million	2.25%
$200 million	–	3.25%

~~(b) North Carolina University Research Expenses. – A taxpayer that has North Carolina university research expenses for the taxable year is allowed a credit equal to twenty percent (20%) of the expenses.~~"

SECTION 6.6. Sections 6.4 and 6.5 of this act are effective for taxable years beginning on or after January 1, 2011. The remainder of this part is effective when it becomes law. Sections 6.2 and 6.3 of this act apply to grant applications submitted on or after July 1, 2010.

PART VII: TREAT WOOD CHIPPERS LIKE OTHER COMMERCIAL LOGGING EQUIPMENT

SECTION 7.1. 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, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(4g) Sales of wood chipping machinery to which is assigned a 17-digit vehicle identification number specified by the National Highway Transportation Safety Association. For the purpose of this section, "wood chipping machinery" is machinery used to convert raw forest products into wood chips.

...."

SECTION 7.2. This part becomes effective July 1, 2010, and applies to sales made on or after that date.

PART VIII: PURCHASING AND CONTRACT CHANGES TO BENEFIT NORTH CAROLINA BUSINESSES

SECTION 8.1. G.S. 143-59 reads as rewritten:

"**§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies; North Carolina businesses; reciprocal preferences.**

(a) Preference. – The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution.

(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may, after consultation with the Board of Awards, waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration and the Board of Awards shall consider factors that include competition, price, product origination, and available resources.

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

(1) Resident bidder. – A bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State.

(2) Nonresident bidder. – A bidder that is not a resident bidder as defined in subdivision (1) of this subsection.

(3) Principal place of business. – The principal place from which the trade or business of the bidder is directed or managed.

(d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into under G.S. 143-53(a)(5) or G.S. 143-57.

(e) When a contract is awarded by the Secretary using the provisions of subsection (b) of this section, a report of the nature of the contract, the bids received, and the award to the successful bidder shall be posted on the Internet as soon as practicable.

(f) Resident Bidder Notification. – When the Secretary puts a contract up for competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who have expressed an interest in bidding on contracts of that nature. The Secretary may opt to provide notice under this section by electronic means only.

(g) Low Bidder Matching. – Notwithstanding any other provision of law, when State agencies, campuses of The University of North Carolina system and its General Administration, and the Department of Community Colleges are procuring supplies, materials, equipment, and other tangible personal property or construction, architectural, or engineering services through any procurement process in which award of the contract is to be made to the lowest responsive and responsible bidder and the lowest bid is that of a responsible and responsive nonresident bidder and the bid of a responsible and responsive resident bidder is within five percent (5%) or within ten thousand dollars ($10,000), whichever is less (the match zone), of the nonresident bidder's bid, then the resident bidder shall be offered the option of matching the nonresident bidder's bid, and, if otherwise qualified, being awarded the contract at the lower price. If the lowest resident bidder declines to match the lower price, each responsible and responsive resident bidder whose bid is within the match zone shall in turn be offered the opportunity to match the lower price."

SECTION 8.2. G.S. 44A-26(a) reads as rewritten:

"(a) When the total amount of construction contracts awarded for any one project exceeds ~~three~~ five hundred thousand dollars ~~($300,000)~~,($500,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars ($50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable."

SECTION 8.3. Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-131.1. Small project bidding by State agencies, boards, commissions, and institutions.**

(a) All contracts for construction or repair work involving the expenditure of public money in the amount of thirty thousand dollars ($30,000) or more, but less than the limits prescribed in G.S. 143-129, made by State agencies, boards, commissions, and institutions shall be made after informal bids have been secured. Informal solicitation for informal bids shall include small resident bidders to the extent practicable. A 'small resident bidder' is a bidder that meets the requirements for a resident bidder under G.S. 143-59(c) and that can certify that its

gross revenues for its last completed fiscal year did not exceed one million five hundred thousand dollars ($1,500,000).

(b) The Department of Administration may identify projects or classes of projects within its control that are likely to attract substantial participation by small resident bidders and to restrict solicitation and award of contracts on those projects to small resident bidders.

(c) All contracts let pursuant to this section shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

(d) The Department of Administration may waive any bonding requirements of Chapter 44A of the General Statutes for contracts let under this section."

SECTION 8.4.(a) The General Assembly makes the following findings:

(1) A multiple award schedule contract is one that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogue for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, and higher education facilities.

(2) A multiple award schedule contract allows multiple vendors to compete and be awarded a contract based upon the value of their products or services.

(3) A properly administered multiple award schedule contract allows the State to evaluate vendors based on a variety of factors, including discounts, total life cycle costs, service, warranty, distribution channel, and past vendor performance.

(4) Under appropriate circumstances, multiple award schedule contracts result in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.

SECTION 8.4.(b) The North Carolina Department of Administration is strongly encouraged to consider the use of multiple award schedule contracts when issuing requests for proposals for State term contracts.

SECTION 8.5. This part becomes effective July 1, 2010.

PART IX: EFFECTIVE DATE

SECTION 9.1. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1973 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Goforth

moves to amend the bill on page 18, line 13

( ) WHICH CHANGES THE TITLE

by replacing the phrase "construction, architectural, or engineering"

with the phrase "construction or architectural"

SIGNED Bruce Goforth

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1973 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET OF VARIOUS ECONOMIC INCENTIVES AND TO PROVIDE AN ENHANCED INCENTIVE FOR JOBS IN HIGH UNEMPLOYMENT COUNTIES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1936

Short Title:	Remove Sunset/ Priv. Sale Local Gov't Bonds.	(Public)
Sponsors:	Representatives Owens; Faison and Lucas.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE AUTHORIZATION TO SELL, THROUGH A PRIVATE SALE, LOCAL GOVERNMENT BONDS THAT ARE EITHER NOT RATED OR RATED BELOW "AA," SO AS TO CONTINUE TO TAKE ADVANTAGE OF THE FEDERAL "BUILD AMERICA BONDS" PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-123(b)(8) reads as rewritten:

"**§ 159-123. Sale of bonds by sealed bids; private sales.**

...

(b) The following classes of bonds may be sold at private sale:

...

(8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this ~~subsection that are sold prior to December 31, 2010.~~subsection."

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

HOUSE BILL 1936:
Remove Sunset/ Priv. Sale Local Gov't Bonds

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 9, 2010
Introduced by:	Rep. Owens	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1936 would remove the sunset on the authorization to sell local bonds that are either not rated or rated below "AA" through a private sale.

CURRENT LAW: Bonds issued by units of local government must be sold by the Local Government Commission after advertisement and upon sealed bids, unless it meets one of 9 statutory exceptions. Under current law, the following types of bonds may be sold at private sale:

- Bonds that a State or federal agency has previously agreed to purchase.
- Bonds for which no legal bid is received within the time allowed for submission of bids.
- Revenue bonds and special obligations bonds issued under G.S. 159-84.
- Refunding bonds issued under G.S. 159-78.
- Refunding bonds issued under G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Bonds that result in a tax credit to the owners under federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- Project development financing debt instruments.
- **General obligation bonds issued under the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" or are unrated if they are sold before December 31, 2010.**
- Bonds that are part of an issue in which the interest payment on some or all of the bonds is intended to be subsidized by payments from the federal government if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

BILL ANALYSIS: House Bill 1936 would remove the December 31, 2010 sunset on the private sale of obligation bonds issued under the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" or are unrated.

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

BACKGROUND: According to the State and Local Government Finance Division of the Department of State Treasurer, these types of bonds are a part of the American Recovery and Reinvestment Act of 2009 (ARRA) and that lifting the current sunset date would allow local governments to continue to take advantage of these instruments.

H1936-SMRQ-147(e1) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1936 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE AUTHORIZATION TO SELL, THROUGH A PRIVATE SALE, LOCAL GOVERNMENT BONDS THAT ARE EITHER NOT RATED OR RATED BELOW "AA," SO AS TO CONTINUE TO TAKE ADVANTAGE OF THE FEDERAL "BUILD AMERICA BONDS" PROGRAM.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

Corrected Notice
H1920 Added

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 23, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1246	Well Grouting Inspection/Bond Requirement.	Representative Haire
HB 1726	Improve Child Care Nutrition/Activity Stnds.	Representative Weiss Representative England, M.D. Representative McLawhorn Representative Yongue
HB 1913	ATV and PWC Sales Tax Holiday.	Representative Wray
HB 1920	Brunswick Co. Economic Dev. Comm. Membership.	Representative Iler Representative Hill
HB 1964	Catawba CC/Exception to Umstead Act.	Representative Warren

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **15** o'clock on **June 22, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 23, 2010
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The following bills will be considered:

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HB 1913	ATV and PWC Sales Tax Holiday.	Representative Wray
HB 1964	Catawba CC/Exception to Umstead Act.	Representative Warren

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **16** o'clock on **June 21, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

North Carolina General Assembly
House Committee on Commerce, Small Business and Entrepreneurship

MINUTES

Wednesday, June 23, 2010

The House Committee on Commerce, Small Business and Entrepreneurship met Wednesday, June 23, 2010, at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Representative Tarleton, Chair, Representatives Adams, Goforth, Starnes, Stewart, Wilkins, Co-Chairs, Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Brown, Cole, England, Farmer-Butterfield, Floyd, Frye, Gillespie, Heagarty, Holloway, May, McGee, Mills, Parfitt, Rapp, Samuelson, Steen, E. Warren, Wray.

Representative Tarleton called the meeting to order. He recognized the pages and thanked the staff and Sergeant-at-Arms for their services. A copy of the visitor's registration sheet is attached.

Representative Tarleton recognized Representative Jennifer Weiss who presented *HB 1726 Improve Child Care Nutrition/Activity Standards* to the committee (Attachment #1). A PCS was presented and Representative Goforth moved to approve it for consideration. Motion passed (Attachment #2). Representative Weiss and Representative England explained the bill. Representative Adams moved to give the PCS a favorable report, unfavorable to the original. Motion passed.

Representative Tarleton recognized Representative Ray Warren who presented *HB 1964 Catawba CC/Exception to Umstead Act* to the committee (Attachment #3). Representative Avila made a motion to give a favorable report to the bill and re-refer to the committee on Education. Motion passed.

Representative Tarleton recognized Representative Wray who presented *HB 1913 ATV and PWC Sales Tax Holiday* to the committee (Attachment #4). Representative Blackwood proposed an amendment to the bill on page 2, line 36 that adds a sunset date of June 30, 2013. Representative Blackwood made a motion to adopt the amendment and it passed. Representative Braxton made a motion to give a favorable report to the bill as amended, roll this into a PCS and re-refer to the committee on Finance. This motion failed. The bill remains in the committee.

Representative Tarleton recognized Representative Frank Iler who presented *HB 1920 Brunswick Co Economic Dev. Comm.. Membership* to the committee (Attachment #5). An amendment was presented by Representative Boles that would change the number of at-large representatives from three to two on page 1 line 8. Representative Boles made a motion to adopt this amendment and it passed (Attachment #6). Representative McGee made a motion to give a favorable report to the bill as amended and roll into a PCS, unfavorable to the original. Motion passed.

There being no further business the meeting was adjourned.

Respectfully submitted,

Representative Cullie Tarleton, Chairman

Susan H. Whitehead

Susan H. Whitehead, Committee Clerk

AGENDA

House Committee on
Commerce, Small Business and Entrepreneurship
Wednesday, June 23, 2010

I. Welcome
   a. Commerce, Small Business and Entrepreneurship Committee
   b. Sergeant at Arms
   c. Interns
   d. Pages
   e. Staff

II. Commerce, Small Business and Entrepreneurship website
   a. All documents from meetings will be posted there
   b. You get there by going to the General Assembly website
      i. Click "Committees" (heading across top)
      ii. Click "Committee Websites"
      iii. Scroll down to "House Commerce, Small Business and Entrepreneurship".

III. HB 1726 Improve Child Care Nutrition/Activity Standards, Representative Weiss
Serial Referral: None

IV. HB 1964 Catawba CC/Exception to Umstead Act, Representative R. Warren
Serial Referral: Education

V. HB 1246 Well Grouting Inspection/Bond Requirement, Representative Haire
Serial Referral: Environment and Natural Resources

VI. HB 1913 ATV and PWC Sales Tax Holiday, Representative Wray
Serial Referral: Finance

VII. HB 1920 Brunswick Co. Economic Dev. Comm. Membership, Representative Iler
Serial Referral: None

VIII. Adjourn

Rm. 1128
LT 05

HOUSE PAGES

COMMERCE SMALL BUSINESS & ENTREPRENEURSHIP

NAME OF COMMITTEE _____ DATE 6-23-10

1. Name: Brittany Brown
   County: Washington
   Sponsor: Spear
2. Name: Kiara Willis
   County: Cumberland
   Sponsor: Floyd
3. Name: Will Waldorf
   County: Forsyth
   Sponsor: Folwell
4. Name: Abby Wierman
   County: Forsyth
   Sponsor: Folwell
5. Name: _____
   County: _____
   Sponsor: _____

SGT-AT-ARM

1. Name: EARL COKER
2. Name: FRANK PREVO
3. Name: _____
4. Name: _____

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 23, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Willis	NCCCS
Ginny Upchurch	NCDOR
Joe McCleog	McCleester
Will Culpepper	MVA
Heni McClees	McClees Consulting
Robin Smith	DENR
C. L. Mantzios	AWA
Craig Horn	member-elect, Dist 68
Tammy Barnes	DCD/DHHS
Jani Kozlowski	DCD
Anna Carter	DCD/DHHS

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 23, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	UNC School of Government
Sara Burrows	Carolina Journal
Daniel Staley	App. District Health Dept.
Ted Lyon	NC DENR
Elizabeth Biser	DENR
Janie Hauser	DENR
JON FOWLKES	ALAMANCE CO. ENVIRONMENTAL HEALTH
Terri Ritter	Chatham Co. Environmental Health
LARRY SULLIVAN	NC ENV Health Supv. Asso.
Maria Salerno	American Heart Assn.
Betsy Velter	American Heart Assn
Christine Wreason	Amer. Cancer Society

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 23, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deb Cassidy	DCD/DHHS
Roz Savitt	NCCCR
Paul Hogeman	Impact
Tony Lyles	MWC
Scott Mooney	The Insiders

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship — June 23, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Bain	Troutman Sanders
Kelly Seamon	NCACC
Jack Cozort	NSS
Colleen Kochanek	Kochanek Law Group

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1726*
Committee Substitute Favorable 5/24/10

Short Title: Improve Child Care Nutrition/Activity Stnds. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE CHILD CARE COMMISSION, IN CONSULTATION WITH THE DIVISION OF CHILD DEVELOPMENT OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO DEVELOP IMPROVED NUTRITION STANDARDS FOR CHILD CARE FACILITIES, AND TO DIRECT THE DIVISION OF CHILD DEVELOPMENT TO STUDY AND RECOMMEND GUIDELINES FOR INCREASED LEVELS OF PHYSICAL ACTIVITY IN CHILD CARE FACILITIES, AS RECOMMENDED BY THE LEGISLATIVE TASK FORCE ON CHILDHOOD OBESITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-91(2) reads as rewritten:

"(2) Health-Related Activities. – The Commission shall adopt rules for child care facilities to ensure that all children receive nutritious food and beverages according to their developmental needs. ~~After consultation with the State Health Director,~~ The Commission shall consult with the Division of Child Development of the Department of Health and Human Services to develop nutrition standards ~~shall~~ to provide for requirements appropriate for children of different ages. The nutrition standards shall include all of the following:

a. A prohibition against serving sugar-sweetened beverages to children of any age.

b. A requirement to serve reduced fat milk to children older than two years of age.

c. A prohibition against serving more than four to six ounces of juice per day to children over one year of age.

Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out-of-doors each day if weather conditions permit."

SECTION 2. The Department of Health and Human Services, Division of Child Development, shall examine the current levels of physical activity children receive in child care facilities and review model physical activity guidelines. Not later than September 1, 2011, the Division shall report its findings and recommendations for increasing physical activity levels in child care facilities, with a goal of reaching model guidelines, to the Legislative Task Force on Childhood Obesity, if reestablished for the 2011-2012 Session, to the Public Health Study Commission, and to the Fiscal Research Division.

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

HOUSE BILL 1726:
Improve Child Care Nutrition/Activity Stnds

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 22, 2010
Introduced by:	Reps. Weiss, England, McLawhorn, Yongue	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition H1726-CSSH-72		

SUMMARY: ***House Bill 1726 requires the Child Care Commission to consult with the Division of Child Development, DHHS, to develop specified nutrition standards for child care facilities and requires the Division to examine current levels of physical activity children receive in child care facilities and to report findings and recommendations to the Legislative Task Force on Childhood Obesity, the Public Health Study Commission, and the Fiscal Research Division. This bill is a recommendation from the Legislative Task Force on Childhood Obesity.***

The Proposed Committee Substitute clarifies the nutrition standards and adds a new section directing the Division of Public Health, DHHS, to examine the current nutrition standards and report to the Task Force on Childhood Obesity, the Public Heath Study Commission, and the Fiscal Research Division.

[As introduced, this bill was identical to S1287, as introduced by Sen. Purcell, which is currently in Senate Health Care.]

CURRENT LAW:

G.S. 110-91(2) provides health-related activity standards for licensed child care facilities and requires the Child Care Commission to adopt rules to ensure that all children receive nutritious food and beverages according to their developmental needs. The rules adopted by the Commission in accordance with this section currently require that "*meals and snacks served shall comply with the Meal Patterns for Children in Child Care standards...*". In addition, the rules provide that "*Foods and beverages with little or no nutritional value served as a snack, such as sweets, fruit drinks, soft drinks, etc., will be available only for special occasions.*" (10A NCAC 09 .0901)

Child Care Facility - G.S. 110-86 specifies that a "child care facility" includes child care centers, family child care homes, and any other child care arrangement, not excluded by the definition of child care specified in G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.

b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

BILL ANALYSIS:

Section 1 of House Bill 1726 amends G.S. 110-91(2) to require the Child Care Commission to consult with the Division of Child Development, DHHS, to develop the following nutrition standards for child care facilities:

- A prohibition on serving sugar sweetened beverages to children of any age.

- A prohibition against serving whole milk to children two years of age or older or flavored milk to children of any age.
- A prohibition on serving more than six ounces of juice per day to children of any age.
- A requirement that all juice be served in a cup not a bottle.

Section 2 requires the Division of Child Development, DHHS, to examine the current levels of physical activity children receive in child care facilities and to review model physical activity guidelines. Not later than September 1, 2011, the Division is required to report findings and recommendations for increasing physical activity levels in child care facilities, with a goal of reaching model guidelines. The Division must provide the report to the Legislative Task Force on Childhood Obesity, if reestablished, the Public Health Study Commission, and the Fiscal Research Division.

Section 3 directs the Division of Public Health, DHHS, in conjunction with the Division of Child Development, nutritionists, pediatricians, and child care providers to examine current nutrition standards for children in child care facilities. The Division of Public Health shall report its findings and recommendations for improving nutrition standards to the Legislative Task Force on Childhood Obesity, if reestablished, the Public Health Study Commission, and the Fiscal Research Division, no later than December 1, 2010.

EFFECTIVE DATE: House Bill 1726 would become effective when it becomes law.

BACKGROUND:

This bill is a recommendation from the Task Force on Childhood Obesity. During the Task Force meeting on February 11th, Sara Benjamin, Duke University Medical Center's Department of Community and Family Medicine, informed the Task Force that nearly three-fourths of children ages two to six years are in some form of child care. Dr. Benjamin pointed out that there is evidence to suggest that child care attendance does contribute to childhood obesity and she presented the Task Force with model child care policies on healthy eating and physical activity and with state rankings for healthy eating and physical activity regulations that gave North Carolina an overall grade C. The Task Force recommended the General Assembly enact the language contained in HB 1726.

Theresa Matula, staff to House Health, substantially contributed to this summary.

H1726-SMRO-182(CSSH-72) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1726*
Committee Substitute Favorable 5/24/10
PROPOSED COMMITTEE SUBSTITUTE H1726-CSSH-72 [v.3]

6/23/2010 10:50:17 AM

Short Title: Improve Child Care Nutrition/Activity Stnds. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE CHILD CARE COMMISSION, IN CONSULTATION WITH THE DIVISION OF CHILD DEVELOPMENT OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO DEVELOP IMPROVED NUTRITION STANDARDS FOR CHILD CARE FACILITIES, TO DIRECT THE DIVISION OF CHILD DEVELOPMENT TO STUDY AND RECOMMEND GUIDELINES FOR INCREASED LEVELS OF PHYSICAL ACTIVITY IN CHILD CARE FACILITIES, AND TO DIRECT THE DIVISION OF PUBLIC HEALTH TO WORK WITH OTHER ENTITIES TO EXAMINE AND MAKE RECOMMENDATIONS FOR IMPROVING NUTRITION STANDARDS IN CHILD CARE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-91(2) reads as rewritten:

"(2) Health-Related Activities. – The Commission shall adopt rules for child care facilities to ensure that all children receive nutritious food and beverages according to their developmental needs. ~~After consultation with the State Health Director,~~ The Commission shall consult with the Division of Child Development of the Department of Health and Human Services to develop nutrition standards ~~shall~~ to provide for requirements appropriate for children of different ages. The nutrition standards shall include all of the following:

a. A prohibition against serving sugar-sweetened beverages to children of any age.

b. A prohibition against serving whole milk to children two years of age or older or flavored milk to children of any age.

c. A prohibition against serving more than six ounces of juice per day to children of any age.

d. A requirement that all juice be served in a cup and not in a bottle.

Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out-of-doors each day if weather conditions permit."

SECTION 2. The Department of Health and Human Services, Division of Child Development, shall examine the current levels of physical activity children receive in child care facilities and review model physical activity guidelines. Not later than September 1, 2011, the Division shall report its findings and recommendations for increasing physical activity levels in

child care facilities, with a goal of reaching model guidelines, to the Legislative Task Force on Childhood Obesity, if reestablished, to the Public Health Study Commission, and to the Fiscal Research Division.

SECTION 3. The Department of Health and Human Services, Division of Public Health, in conjunction with the Division of Child Development, nutritionists, pediatricians, and child care providers, shall examine the current nutrition standards for children in child care facilities. This examination shall be conducted in consideration of any potential changes in the federal guidelines related to the Child and Adult Care Food Program. Not later than December 1, 2010, the Division of Public Health shall report its findings and recommendations for improving nutrition standards in child care facilities to the Legislative Task Force on Childhood Obesity, if reestablished, to the Public Health Study Commission, and to the Fiscal Research Division.

SECTION 4. This act is effective when it becomes law.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute 1 for

HB 1726 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE CHILD CARE COMMISSION, IN CONSULTATION WITH THE DIVISION OF CHILD DEVELOPMENT OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO DEVELOP IMPROVED NUTRITION STANDARDS FOR CHILD CARE FACILITIES, AND TO DIRECT THE DIVISION OF CHILD DEVELOPMENT TO STUDY AND RECOMMEND GUIDELINES FOR INCREASED LEVELS OF PHYSICAL ACTIVITY IN CHILD CARE FACILITIES, AS RECOMMENDED BY THE LEGISLATIVE TASK FORCE ON CHILDHOOD OBESITY.

☒ With a favorable report as to Committee Substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 1913

Short Title:	ATV and PWC Sales Tax Holiday.	(Public)
Sponsors:	Representatives Wray; and Faison.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Finance.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO CREATE A NEW SALES TAX HOLIDAY FOR PERSONAL WATERCRAFT AND PERSONAL ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) All-terrain vehicle. – Defined in G.S. 20-4.01.

(1a) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.

~~(1a)~~(1b) 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.

...

(26a) Personal watercraft. – A small vessel 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, rather than in the conventional manner of sitting or standing inside the vessel.

(26b) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use.

...."

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

"**§ 105-164.13E. Sales and use tax holiday for all-terrain vehicles and personal watercraft.**

(a) The taxes imposed by this Article do not apply to all-terrain vehicles or personal watercraft if sold between 12:01 A.M. on the third Friday of June and 11:59 P.M. the following Sunday.

(b) The exemption allowed by this section does not apply to the following:

(1) The sale of a product for use in a trade or business.

(2) The rental of a product."

SECTION 3. 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 holidays contained in ~~G.S. 105-164.13C and~~G.S. 105-164.13C, G.S. 105-164.13D, and G.S. 105-164.13E, and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 4. The second paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws reads as rewritten:

"The exemptions and exclusions contained in G.S. 105-164.13 and the sales and use tax holidays contained in ~~G.S. 105-164.13C and G.S. 105-164.13D~~G.S. 105-164.13C, 105-164.13D, and 105-164.13E apply with equal force and like manner to the local sales tax authorized to be imposed and levied under this division. The county shall have no authority, with respect to the local sales and use tax imposed under this division, to change, alter, add, or delete any exemptions or exclusions contained under G.S. 105-164.13."

SECTION 5. This act is effective when it becomes law and applies to sales made on or after that date.

HOUSE BILL 1913:
ATV and PWC Sales Tax Holiday

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 23, 2010
Introduced by:	Rep. Wray	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1913 would create a new sales tax holiday for personal watercraft and personal all-terrain vehicles.

[As introduced, this bill was identical to S1231, as introduced by Sen. Jones, which is currently in Senate Finance.]

CURRENT LAW: North Carolina currently has two sales and use tax holidays during which purchases of certain items are exempt from the sales and use tax.

- G.S. 105-164.13C occurs on the first weekend in August. It is commonly referred to as the "Back to School" sales tax holiday because the exempt items are purchases often made in preparation for returning to school such as clothing with a sales price of $100 or less per item; school supplies with a sales price of $100 or less per item and computers with a sales price of $3,500 or less per item. This sales and use tax exemption does not apply to items such as clothing accessories or furniture.
- G.S. 105-164.13C occurs on the first weekend in November and relates to purchases of energy efficient appliances and heating and cooling items. The products must be "Energy Star qualified products" which meet the energy efficient guidelines set by the US Environmental Protection Agency and the United States Department of Energy and are authorized to carry the Energy Star label. Examples of exempt products are: clothes washers, freezers and refrigerators, central air conditioners and room air conditioners, heat pumps, and ceiling fans. The sales and use tax exemption does not apply to a sale of a product for use in a trade or business or the rental of a product.

BILL ANALYSIS: House Bill 1913 would create a new sales and use tax holiday for personal watercraft and personal all-terrain vehicles. The sales and use tax holiday for these items would be on the third weekend of June. The exemption from the sales and use tax would not apply to the sale of a product for use in a trade or business or the rental of a product.

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to sales made on or after that date.

H1913-SMRQ-154(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 1913 (First Edition)

SHORT TITLE: ATV and PWC Sales Tax Holiday

SPONSOR(S): Representative Wray

FISCAL IMPACT ($ In Millions)

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

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES					
State	(0.359)	(0.305)	(0.312)	(0.319)	(0.326)
Local	(0.125)	(0.128)	(0.132)	(0.135)	(0.137)
EXPENDITURES					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: HB 1913 creates a sales tax holiday for personal watercraft (jet skis) and personal all-terrain vehicles during the third weekend of June. This bill becomes effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that enacting HB 1913 would reduce General Fund availability by $359,000 in FY 2010-2011. Using data from the Motorcycle Industry Council, Personal Watercraft Industry Association, and the North Carolina Wildlife Resources Commission, the estimate assumes that five percent of personal watercraft and all-terrain vehicle (ATV) sales will occur during the sales tax holiday weekend.

According to the Tax Foundation, sales and use tax holidays encourage two behaviors. In the absence of a tax, retailers raise prices; consumers shift the timing of their purchases to the "holiday

weekend."[1] Therefore, the true cost of a holiday is contingent on how many consumers shift their purchases to the tax exempt time period. In North Carolina's past sales tax holidays, roughly five percent of annual sales occurred during the holiday weekends.

Personal Watercraft

Fiscal estimates that the sales tax holiday for personal watercraft under HB 1913, if enacted, would reduce General Fund availability by $229,400 during the 2010-11 fiscal year. In 2007, the North Carolina Wildlife Resources Commission began requiring that all PWC owners register their vehicles with the Commission. The table below represents the number of new PWC registrations that the Commission received between 2007 and 2009. Fiscal used the number of newly registered vehicles as a proxy for the number of PWCs purchased annually.

New Personal Watercraft (PWC) Registrations, by Year	
Year	**PWC Registrations**
2007	7,912
2008	7,740
2009	7,350
Average	**7,667**
Source: North Carolina Wildlife Resources Commission	

According to the 2006 Personal Watercraft Industry Report, the average cost of a personal watercraft purchased in 2004 equaled $ 9,226. Earmarking this figure by the average annual inflation between 2004 and 2009, of 2.1%, equals the average cost of a PWC in 2009, $10,236. Fiscal estimated the impact of a PWC sales tax holiday by calculating the gross receipts received from PWC sales during the tax exempt period, earmarking this figure for inflation during the 2010-11 fiscal year, and then multiplying the 2010-11 expected gross receipts by the current State or local sales tax rates (7,667 * 5%* $10,236 * 1.65% * 5.75%/2%). The fiscal impact of a sales tax holiday for PWC equals a $229,400 reduction in General Fund availability and a $79,800 reduction in local sales tax revenue during the 2010-11 fiscal year.

All Terrain Vehicles

According to the Motorcycle Industry Council, major ATV manufacturers reported $44.4 million in North Carolina sales during the 2009 calendar year. Earmarking this figure by the annual inflation rate of 1.65% and assuming that 5% of these sales would occur during the sales tax holiday, the fiscal impact of a sales tax exemption would apply to $2.6 million in ATV sales. To calculate the fiscal impact of a sales and use tax exemption during the third weekend in June, Fiscal Research multiplied the expected sales during the first weekend in June by the State and local tax rates of 5.75% and 2%, listed respectively. The sales tax holiday proposed in HB 1913 would reduce General Fund availability by $130,000 in FY 2010-11 and by $110,000 to $120,000 in subsequent years.

[1] The Tax Foundation. "Florida's Sales Tax Holiday and Film Tax Credit Proposals Will Not Deliver." Published February 17, 2010. Available at: http://www.taxfoundation.org/research/show/25850.html.

SOURCES OF DATA:
Media Relations, Motorcycle Industry Council, Motorcycle Industry Council, "Retail Sales Report, 2009."

North Carolina Wildlife Resources Commission

Personal Watercraft Industry Association, "The History, Evolution, and Profile of Personal Watercraft, 2006." Available at: http://www.pwia.org/UserFiles/File/History-PWC.pdf.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:
Sandra Johnson, Fiscal Analyst
Fiscal Research Division

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 11, 2010

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1964

Short Title:	Catawba CC/Exception to Umstead Act.	(Local)
Sponsors:	Representatives R. Warren; Hilton and Setzer.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Education.	

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE VENTUREPRISE CENTER AND THE MANUFACTURING SOLUTIONS CENTER AT CATAWBA VALLEY COMMUNITY COLLEGE FROM THE UMSTEAD ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The provisions of G.S. 66-58 do not apply to the VenturePrise Center or the Manufacturing Solutions Center at Catawba Valley Community College. The VenturePrise Center is a business solutions catalyst and value-added conduit for educational and training support services for Western North Carolina. The Manufacturing Solutions Center provides concept through design, production, distribution, marketing, expansion, and other solutions for business clients.

SECTION 2. This act applies only to Catawba Valley Community College.

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

HOUSE BILL 1964:
Catawba CC/Exception to Umstead Act

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Education	**Date:**	June 23, 2010
Introduced by:	Rep. R. Warren	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1964 would create an exception to the Umstead Act to allow for the Ventureprise Center and the Manufacturing Solutions Center at Catawba Valley Community College.***

CURRENT LAW: As a general rule, G.S. 66-58 (the Umstead Act) prohibits units, departments, and agencies of State government from competing with private businesses in certain commercial activities such as the sale of merchandise or services. However, a number of exceptions have been created in the statute.

BILL ANALYSIS: House Bill 1964 would create an exception to G.S. 66-58 and allow for the Ventureprise Center and the Manufacturing Solutions Center at Catawba Valley Community College.

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

BACKGROUND: The Ventureprise Center is a business solutions and value-added conduit for educational and training support services for the western part of the State. The Manufacturing Solutions Center provides concept through design, production, distribution, marketing, expansion, and other solutions for business clients.

H1964-SMRQ-155(e1) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1964 A BILL TO BE ENTITLED AN ACT TO EXEMPT THE VENTUREPRISE CENTER AND THE MANUFACTURING SOLUTIONS CENTER AT CATAWBA VALLEY COMMUNITY COLLEGE FROM THE UMSTEAD ACT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on EDUCATION.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1920

Short Title:	Brunswick Co. Economic Dev. Comm. Membership.	(Local)
Sponsors:	Representatives Iler, Hill (Primary Sponsors); and Hughes.	
Referred to:	Local Government II, if favorable, Commerce, Small Business, and Entrepreneurship.	

May 24, 2010

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE MEMBERSHIP OF THE RESOURCES DEVELOPMENT COMMISSION OF BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The membership of the Resources Development Commission of Brunswick County, also known as the Economic Development Commission of Brunswick County, established by Section 10 of S.L. 1961-268, as amended by S.L. 1985-904, is expanded by the appointment of up to three additional at-large members from Brunswick County. Each of these additional members shall qualify for service in the same manner as all other appointments to the Commission.

SECTION 2. This act applies to Brunswick County only.

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

HOUSE BILL 1920: Brunswick Co. Economic Dev. Comm. Membership

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship	**Date:**	June 23, 2010
Introduced by:	Reps. Iler, Hill	**Prepared by:**	Drupti Chauhan* Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1920 expands the membership of the Economic Development Commission of Brunswick County by up to three additional at-large members from Brunswick County.***

CURRENT LAW: Under current law, the Economic Development Commission of Brunswick County is composed of 11 bipartisan members appointed by the Brunswick County Board of Commissioners in the following manner:

- Two from each of the five electoral districts for county commissioners.
- One from Brunswick County at large.

BILL ANALYSIS: House Bill 1920 provides that the membership of the Economic Development Commission of Brunswick County may be expanded by up to three additional at-large members from Brunswick County.

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

H1920-SMRQ-156(e1) v1

**Denise Adams, Research Assistant, and Erika Churchill, Committee Counsel, significantly contributed to this summary.*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1920

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

H1920-ARQ-34 [v.1]

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

Date _____,2010

Representative Boles

moves to amend the bill on page 1, line 8 by deleting the following phrase "up to three" and substituting the word "two".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1920 A BILL TO BE ENTITLED AN ACT TO EXPAND THE MEMBERSHIP OF THE RESOURCES DEVELOPMENT COMMISSION OF BRUNSWICK COUNTY.

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

(FOR JOURNAL USE ONLY)

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

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

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

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 30, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1246	Well Grouting Inspection/Bond Requirement.	Representative Haire
HB 1847	Promote Work Oppy. Tax Credit.	Representative Pierce Representative Bryant Representative Jones Representative Stewart
HB 1906	Regional Economic Recovery Housing Alliances.	Representative Pierce Representative Bryant
SB 1215	Economic Incentives Alignment & Changes.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **13** o'clock on **June 28, 2009.**

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

AGENDA

House Committee on
Commerce, Small Business and Entrepreneurship
Wednesday, June 30, 2010

I. Welcome
   a. Commerce, Small Business and Entrepreneurship Committee
   b. Sergeant at Arms
   c. Interns
   d. Pages
   e. Staff

II. *HB 1246 Well Grouting Inspection/Bond Requirement*, Representative Haire
Serial Referral: Environment and Natural Resources

III. *HB 1847 Promote Work Oppy. Tax Credit*, Representative Pierce
Serial Referral: Appropriations

IV. *HB 1906 Regional Economic Recovery Housing Alliances*, Representative Pierce
Serial Referral: Judiciary III

V. *SB 1215 Economic Incentives Alignment & Changes*, Senator Jenkins
Serial Referral: Finance

VI. Adjourn

North Carolina General Assembly
House Committee on Commerce, Small Business and Entrepreneurship

MINUTES
Wednesday, June 30, 2010

The House Committee on Commerce, Small Business and Entrepreneurship met Wednesday, June 30, 2010, at 1:00 pm in Room 1228 of the Legislative Building. The following members were present: Representative Tarleton, Chair, Representatives, Carney, Wilkins, Co-Chairs, Representatives Avila, Blackwell, Blackwood, Boles, Braxton, Cole, Floyd, Frye, Gillespie, Heagarty, Holloway, May, Mills, Parfitt, Pierce, Rapp, Samuelson, Steen, E. Warren, Wray.

Representative Tarleton called the meeting to order. He recognized the pages and thanked the staff and Sergeant-at-Arms for their services. A copy of the visitor's registration sheet is attached.

Representative Tarleton recognized Representative Phillip Haire who presented *HB 1246 Well Grouting Inspection/Bond Requirement* to the committee (Attachment #1). A PCS was presented and Representative Braxton moved to approve it for consideration. Motion passed (Attachment #2). Representative Haire stated that issues have been brought forward with this bill since it was on the calendar last week. Therefore, until an agreement on these opposing issues can be reached, he is withdrawing the PCS from being considered at this time.

Representative Tarleton recognized Representative Edith Warren who presented *SB1215 Economic Incentives Alignment & Changes* for Senator Clark Jenkins to the committee (Attachment #3). Dan Ettefagh was recognized to explain the bill. Representative Wilkins made a motion to give a favorable report to the bill and re-refer to the committee on Finance. Motion passed.

Representative Tarleton recognized Representative Pierce who stated he will withdraw *HB 1906 Regional Economic Recovery Housing Alliances* from the committee's calendar (Attachment #4).

Representative Pierce presented *HB 1847 Promote Work Oppy. Tax Credit* to the committee (Attachment #5). Representative Pierce explained the bill and Manfred Emory with the Employment Security Commission answered questions. Representative

Floyd made a motion to give a favorable report to the bill and re-refer to the committee on Appropriations. Motion passed.

There being no further business the meeting was adjourned.

Respectfully submitted,

Representative Cullie Tarleton, Chairman

Susan H. Whitehead

Susan H. Whitehead, Committee Clerk

Rm. 1228
1 PM

HOUSE PAGES

COMMERCE, SMALL BUSINESS + ENTREPRENEURSHIP
NAME OF COMMITTEE _____ DATE 6-30-10

1. Name: MARY GRAYSON ~~WAKE~~ M. BROOKE
   County: ~~MARTIN~~ WAKE
   Sponsor: MARTIN
2. Name: CAROLINE NEWCOMBE
   County: VANCE
   Sponsor: HACKNEY
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

SGT-AT-ARM

1. Name: EARL COKER
2. Name: MARTHA PARRISH
3. Name: FRANK PREVO
4. Name: _____

VISITOR REGISTRATION SHEET

COMMERCE, SMALL BUSINESS & ENTREPRENEURSHIP — 6-30-10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Madison Gores	Johnston Memorial Hospital
Anthony Cobern	Johnston Health
April Culver	Johnston Health
Greg Bright	Wake County
Layton Lonon	NCAHHO
DARREN N. CECIL	NCEHSA / DAVIDSON COUNTY
Terry L. Pierce	Div Env Hlth, DENR
Weatherley Rose	Hunton & Williams
BRIAN DEMPSEY	MWC
MARTIN EMMERICH	ESC
Lockhart Taylor	ESC

VISITOR REGISTRATION SHEET

Commerce, Small Business & Entrepreneurship — 6-30-10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kay Emanuel	UNC Institute of Government
Will Pamplin	NCHFA
Carley Ruff	NCHC
TYLER NEWMAN	BASF
Zane Stilwell	GPA
Kate Binion	DOR
Peter Gehred	CC NC
Elizabeth Biser	DENR
[illegible]	Electricities
Will Culpepper	MVA
CSaffells	TSS

VISITOR REGISTRATION SHEET

Commerce + Jobs Business — 6-3-2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelli Kuehne	NCLM
Doug Lassiter	NCSTA
Lisa Martin	NC Home Builders
Bob Stocum	NCFP
Kevin Leonard	NCACC
Doug Hemm	WM
[illegible]	BCS
Keith Karlsson	Rep Hagarty Intern
Betty Huskins	NC Assoc. Regional Councils
David Crawford	AIA NC
David McFarlane	NC Realtors

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

HOUSE BILL 1246

Short Title:	Well Grouting Inspection/Bond Requirement.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW WATER WELL CONTRACTORS TO GROUT WATER WELLS WITHOUT A PRIOR INSPECTION BY THE LOCAL HEALTH DEPARTMENT AND TO REQUIRE WATER WELL CONTRACTORS TO OBTAIN A BOND OR OTHER SECURITY PAYABLE FOR LOSSES DUE TO DEFECTIVE WELL CONSTRUCTION OR WELL REPAIR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97 is amended by adding a new subsection to read:

"(g1) Grout Certificate Issued by Water Well Contractor. – A water well contractor may grout a private drinking water well without a prior inspection by the local health department, and, upon completing the grouting, the water well contractor may provide, within 10 days of completing the grouting, a written certification to the local health department that the well has been grouted in compliance with the requirements of this Article and rules adopted pursuant to this Article. For purposes of issuing a certificate of completion under subsection (g) of this section, the well contractor's grout certification shall be accepted by the Department as evidence the grout complies with the requirements of this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(g) reads as rewritten:

"(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, the construction and repair requirements of 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. This subsection is subject to subsection (g1) of this section."

SECTION 3. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97.3. Bond requirement for water well contractors.**

(a) Each water well contractor that applies for a construction permit or a repair permit under G.S. 87-97 or for the renewal of such a permit shall not obtain the permit unless the contractor files and maintains in force a bond in favor of the State of North Carolina, executed

by a surety approved by the Commissioner of Insurance, in the amount of twenty-five thousand dollars ($25,000) for each water well contractor. The bond shall be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days' written notice thereof to the Department and to the water well contractor.

(b) The water well contractor that applies for a construction permit or a repair permit under G.S. 87-97 or for the renewal of such a permit shall have the option of filing a separate bond for each such permit or of filing a blanket bond covering all well construction and repairs requiring a permit within the State for which the applicant holds a permit.

(c) The bond under subsection (a) of this section shall be conditioned upon the faithful performance of the requirements of this Article and rules adopted pursuant to this Article and shall be payable for losses due to defective well construction or well repair by the water well contractor or the contractor's agents operating in the course and scope of the contractor's agency. Upon filing the bond with the Department, the water well contractor shall lose all right, title, and interest in the bond while the bond is held by the Department. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

(d) In lieu of the surety bond required by this section, the water well contractor may file with the Department a cash deposit, an irrevocable letter of credit, a guaranty of payment from an acceptable bank, an assignment of a savings account in an acceptable bank on an assignment form prescribed by the Department, or other security acceptable to the Department.

(e) If the license to do business in North Carolina of any surety upon a bond filed pursuant to this section should be suspended or revoked, the water well contractor shall, within 60 days after receiving notice thereof, substitute for the surety a good and sufficient corporate surety authorized to do business in this State. Upon failure of the water well contractor to substitute sufficient surety within the time specified, the contractor's construction permit or repair permit shall be automatically revoked.

(f) After a hearing, the Environmental Management Commission may initiate claims on the bond or other security under this section for the cost of remediation or abatement of the losses under subsection (c) of this section. Claims are limited to actual damages. The person who owns the property on which the well is located where the defective well construction or well repair occurred may initiate a civil action in the county in which that well is located to recover against the bond."

SECTION 4. This act becomes effective October 1, 2009, and Section 1 and Section 2 of this act apply to the construction or repair of wells that occurs on or after that date. The bond requirement under G.S. 87-97.3, as enacted by Section 3 of this act, applies to water well contractors, as defined in G.S. 87-85, that apply for a construction permit or a repair permit or for the renewal of such a permit on or after that date.

HOUSE BILL 1246:
Well Grouting Inspection/Bond Requirement

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Environment and Natural Resources	**Date:**	June 23, 2010
Introduced by:	Rep. Haire	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	PCS to First Edition H1246-CSRIf-65		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1246 would allow water well contractors to grout water wells without a prior inspection by the local health department and would require water well contractors to obtain a bond or other security payable for losses due to defective well construction or repair. The PCS increases the following maximum fees that may be assessed to well contractors: (1) the fee for certification by examination ($100 to $110), (2) the annual fee for certification renewal ($200 to $210), and (3) the fee for temporary certification ($100 to $110).***

CURRENT LAW: Each county, through the local health department that serves the county, must implement a private drinking water well permitting, inspection, and testing program. Local health departments must administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements. (G.S. 87-97(a)).

Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

- Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.
- Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department. A repair permit is not required for any of the following:
    - The repair or replacement of a pump or tank.
    - Private drinking water well maintenance work that does not involve breaking or opening the well seal.
    - Private drinking water well repair work that involves only the repair or replacement of a pump or tank. (G.S. 87-97(b)-(c)).

The local health department must issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired in compliance with the statutes and rules. The local health department may impose any conditions it determines to be necessary to ensure compliance. (G.S. 87-97(e)). A construction permit or repair permit is valid for 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. (G.S. 87-97(f)).

If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the permit and the construction and repair requirements, then the local health department must issue a certificate of completion. No person shall do either of the following without getting a certificate of completion first: (1) place a private drinking water well into service or (2) return a private drinking water well that has undergone repair to service. (G.S. 87-97(g)).

BILL ANALYSIS: The PCS for House Bill 1246 does all of the following:

Section 1 allows a water well contractor to grout a private drinking water well without a prior inspection by the local health department. It would permit the water well contractor to provide, within 10 days of completion of the grouting, a written certification to the local health department that the well has been grouted in compliance with the applicable statutes and rules. The well contractor's grout certification must be accepted by DENR as evidence of compliance with the certificate of completion requirement.

Section 2 makes a conforming change to the subsection dealing with certificates of completion.

Section 3 does all of the following:

- Prohibits a water well contractor form obtaining or renewing a construction permit or repair permit unless the contractor files and maintains a $25,000 continuous bond in favor of the State and executed by the Commissioner of Insurance. The surety's cancellation of the bond is effectuated only upon 60 days' written notice to DENR and the water well contractor.
- Allows the water well contractor to file a separate bond for each permit or file a blanket bond covering all well construction and repairs that require a permit.
- Provides that the bond is payable for losses due to defective well construction or well repair by the contractor or the contractor's agents operating within the scope of that agency.
- Allows the contractor to file with DENR a cash deposit, an irrevocable letter of credit, a guaranty of payment from an acceptable bank, an assignment of a savings account, or other acceptable security in lieu of the surety bond.
- Provides for replacement of a suspended or revoked surety.
- Authorizes the Environmental Management Commission, after a hearing, to initiate claims, limited to actual damages, on the bond or other security for the cost of remediation or abatement of losses. Also allows the property owner to initiate a civil action in the county in which the well is located to recover against the bond.

Section 4 increases the following maximum fees that may be assessed to well contractors: (1) the fee for certification by examination ($100 to $110), (2) the annual fee for certification renewal ($200 to $210), and (3) the fee for temporary certification ($100 to $110).

EFFECTIVE DATE: This act becomes effective October 1, 2010. Section 1 and Section 2 of this act apply to the construction or repair of wells that occur on or after October 1, 2010. The bond requirement under G.S. 87-97.3, as enacted by Section 3 of this act, applies to water well contractors, as defined in G.S. 87-85, that apply for a construction permit or a repair permit or for the renewal of such a permit on or after October 1, 2010. Section 4 applies to fees for certification by examination, annual fees for certification renewal, and temporary certification fees requested on or after October 1, 2010.

H1246-SMRN-125(CSRIf-65) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1246
PROPOSED COMMITTEE SUBSTITUTE H1246-CSRIf-65 [v.5]

6/23/2010 9:56:30 AM

Short Title: Well Grouting Inspection/Bond Requirement. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW WATER WELL CONTRACTORS TO GROUT WATER WELLS WITHOUT A PRIOR INSPECTION BY THE LOCAL HEALTH DEPARTMENT, TO REQUIRE WATER WELL CONTRACTORS TO OBTAIN A BOND OR OTHER SECURITY PAYABLE FOR LOSSES DUE TO DEFECTIVE CONSTRUCTION OR REPAIR, AND TO INCREASE FEES APPLICABLE TO WELL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97 is amended by adding a new subsection to read:

"(g1) Grout Certificate Issued by Water Well Contractor. – A water well contractor may grout a private drinking water well without a prior inspection by the local health department, and, upon completing the grouting, the water well contractor may provide, within 10 days of completing the grouting, a written certification to the local health department that the well has been grouted in compliance with the requirements of this Article and rules adopted pursuant to this Article. For purposes of issuing a certificate of completion under subsection (g) of this section, the well contractor's grout certification shall be accepted by the Department as evidence the grout complies with the requirements of this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(g) reads as rewritten:

"(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, the construction and repair requirements of 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. This subsection is subject to subsection (g1) of this section."

SECTION 3. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97.3. Bond requirement for water well contractors.**

(a) Each water well contractor that applies for a construction permit or a repair permit under G.S. 87-97 or for the renewal of such a permit shall not obtain the permit unless the contractor files and maintains in force a bond in favor of the State of North Carolina, executed by a surety approved by the Commissioner of Insurance, in the amount of twenty-five thousand dollars ($25,000) for each water well contractor. The bond shall be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days' written notice thereof to the Department and to the water well contractor.

(b) The water well contractor that applies for a construction permit or a repair permit under G.S. 87-97 or for the renewal of such a permit shall have the option of filing a separate bond for each such permit or of filing a blanket bond covering all well construction and repairs requiring a permit within the State for which the applicant holds a permit.

(c) The bond under subsection (a) of this section shall be conditioned upon the faithful performance of the requirements of this Article and rules adopted pursuant to this Article and shall be payable for losses due to defective well construction or well repair by the water well contractor or the contractor's agents operating in the course and scope of the contractor's agency. Upon filing the bond with the Department, the water well contractor shall lose all right, title, and interest in the bond while the bond is held by the Department. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

(d) In lieu of the surety bond required by this section, the water well contractor may file with the Department a cash deposit, an irrevocable letter of credit, a guaranty of payment from an acceptable bank, an assignment of a savings account in an acceptable bank on an assignment form prescribed by the Department, or other security acceptable to the Department.

(e) If the license to do business in North Carolina of any surety upon a bond filed pursuant to this section should be suspended or revoked, the water well contractor shall, within 60 days after receiving notice thereof, substitute for the surety a good and sufficient corporate surety authorized to do business in this State. Upon failure of the water well contractor to substitute sufficient surety within the time specified, the contractor's construction permit or repair permit shall be automatically revoked.

(f) After a hearing, the Environmental Management Commission may initiate claims on the bond or other security under this section for the cost of remediation or abatement of the losses under subsection (c) of this section. Claims are limited to actual damages. The person who owns the property on which the well is located where the defective well construction or well repair occurred may initiate a civil action in the county in which that well is located to recover against the bond."

SECTION 4. G.S. 87-98.9 reads as rewritten:

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. – The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred ten dollars ~~($100.00),~~($110.00), the annual fee may not exceed two hundred ten dollars ~~($200.00)~~($210.00) per year, and the temporary certification fee shall not exceed one hundred ten dollars ~~($100.00).~~($110.00) A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. – The Well Construction 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 for the costs of administering this Article."

SECTION 5. This act becomes effective October 1, 2010. Section 1 and Section 2 of this act apply to the construction or repair of wells that occur on or after October 1, 2010. The bond requirement under G.S. 87-97.3, as enacted by Section 3 of this act, applies to water well contractors, as defined in G.S. 87-85, that apply for a construction permit or a repair

permit or for the renewal of such a permit on or after October 1, 2010. Section 4 applies to fees for certification by examination, annual fees for certification renewal, and temporary certification fees requested on or after October 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1215*
Finance Committee Substitute Adopted 6/16/10

Short Title: Economic Incentives Alignment & Changes. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO INCREASE UNIFORMITY IN SUNSET AND REPORTING REQUIREMENTS OF ECONOMIC INCENTIVES TOOLS AND TO ELIMINATE NONUTILIZED ECONOMIC INCENTIVES.

The General Assembly of North Carolina enacts:

PART I: ECONOMIC INCENTIVES REPORTING AND SUNSETS

SECTION 1.1. G.S. 105-129.6(b) reads as rewritten:

"(b) ~~Reports.~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of credits taken for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were taken.

(4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.

(5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were taken.

(6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were taken.

(7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were taken."

SECTION 1.2. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by credit and by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The cost of ~~business property and~~ renewable energy property with respect to which credits were taken.

(2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.3. G.S. 105-129.26(e) reads as rewritten:

"(e) ~~Reports.~~ Report. – The ~~Department of Commerce and the~~ Department ~~of Revenue shall jointly publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article."

SECTION 1.4. G.S. 105-129.38 reads as rewritten:

"**§ 105-129.38. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~ itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.5. Article 3D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.39. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2014."

SECTION 1.6. G.S. 105-129.44 reads as rewritten:

"**§ 105-129.44. Report.**

The Department ~~of Revenue must publish by May 1 of each year~~ must include in the economic incentives report required by G.S. 105-256 the following information ~~for the 12-month period ending the preceding December 31:~~itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.7. G.S. 105-129.54 reads as rewritten:

"**§ 105-129.54. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that took a credit allowed in this Article, itemized by the categories of small business, low-tier, other, and university research.

(2) The amount of each credit taken in each category.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.8. Article 3H of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.75A. Report.**

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.9. G.S. 105-129.85(b) reads as rewritten:

"(b) ~~Reports.~~ Report. – The Department ~~of Revenue shall publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(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."

SECTION 1.10. G.S. 105-129.98 reads as rewritten:

"**§ 105-129.98. ~~Reports.~~Report.**

The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer, for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers that claimed a credit allowed in this Article.

(2) The amount of each credit claimed and the taxes against which it was applied.

(3) The total cost to the General Fund of the credits claimed."

SECTION 1.11. G.S. 105-130.41(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges assessed for the taxable year.

(2a) The amount of the charges attributable to imports.

(2b) The amount of the charges attributable to exports.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.12. G.S. 105-130.45(f) reads as rewritten:

"(f) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of exports with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken."

SECTION 1.13. G.S. 105-130.46(k) reads as rewritten:

"(k) ~~Reports. Any corporation that takes a credit under this section must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports required under this section are due by May 1, 2006.~~Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this section.

(2) The amount of cigarettes and other tobacco products exported through the North Carolina State Ports with respect to which credits were taken.

(3) The percentage of domestic leaf content in cigarettes produced during the previous year, as reported by the taxpayer.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.14. G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information, itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.15. G.S. 105-151.22(c1) reads as rewritten:

"(c1) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The number of taxpayers taking a credit allowed in this section.
(2) The total amount of charges assessed for the taxable year.
(2a) The amount of the charges attributable to imports.
(2b) The amount of the charges attributable to exports.
(3) The total cost to the General Fund of the credits taken."

SECTION 1.16. G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department ~~of Revenue must publish by May 1 of each year~~must include in the economic incentives report required by G.S. 105-256 the following ~~information,~~information itemized by ~~taxpayer for the 12-month period ending the preceding December 31:~~taxpayer:

(1) The location of sites used in a production for which a credit was taken.
(2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
(3) The number of people employed in the State with respect to credits taken.
(4) The total cost to the General Fund of the credits taken."

SECTION 1.17. G.S. 105-164.14(a1), (f), (g), (h), (j), (k), (l), (m), (n), and (o) are repealed.

SECTION 1.18. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, 2011.
(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83; capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) Motorsports team or sanctioning body. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2011.

(5) Professional motorsports team. – A professional motorsports racing team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after January 1, 2013. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038.

(b) Administration. – 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.

(c) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and by taxpayer:

(1) The number of taxpayers claiming a refund allowed in 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 1.19. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.14B. Certain industrial facilities refunds.**

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

(1) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Aircraft manufacturing. – The manufacturing or assembling of complete aircraft or of aircraft engines, blisks, fuselage sections, flight decks, flight deck systems or components, wings, fuselage fairings, fins, moving leading and trailing wing edges, wing boxes, nose sections, tailplanes, passenger doors, nacelles, thrust reversers, landing gear, braking systems, or any combination of these.

(3) Bioprocessing. – 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.

(4) Reserved.

(5) Reserved.

(6) Facility. – A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

(7) Financial services, securities operations, and related systems development. – One or both of the following functions:

a. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio or mutual fund management, retirement services, or employee benefit administration.

b. 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 or mutual fund management, retirement services, or employee benefit administration.

(8) Reserved.

(9) Reserved.

(10) Reserved.

(11) Motor vehicle manufacturing. – Any of the following:

a. Manufacturing complete automobiles and light-duty motor vehicles.

b. 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.

c. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

(12) Reserved.

(13) Reserved.

(14) Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. – Any of the following:

a. Manufacturing biological and medicinal products. For purposes 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.

b. Processing botanical drugs and herbs by grading, grinding, and milling.

c. Isolating active medicinal principals from botanical drugs and herbs.

d. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

(15) Reserved.

(16) Reserved.

(17) Related entity. – An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.

(18) Semiconductor manufacturing. – The development and production of semiconductor material, devices, or components.

(19) Solar electricity generating materials manufacturing. – The development and production of one or more of the following:

a. Photovoltaic materials or modules used in producing electricity.

b. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity.

(20) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

(b) Refund. – An owner of an industrial facility that meets the business, minimum investment, and industry-specific requirements of this section is allowed an annual refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that are installed in the construction of the facility and that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on those items is considered tax paid by the owner. The requirements are:

(1) Business requirement. – The facility is primarily engaged in one or more of the following:

a. Air courier services.

b. Aircraft manufacturing.

c. Bioprocessing.

d. Financial services, securities operations, and related systems development.

e. Motor vehicle manufacturing.

f. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.

g. Semiconductor manufacturing.
h. Solar electricity generating materials manufacturing.

(2) Minimum investment requirement. – 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 a development tier one area, 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.

(3) Industry-specific requirements:

a. 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.

b. If the facility is primarily engaged in solar electricity generating materials manufacturing, the business satisfies a wage standard at the facility. The wage standard is equal to one hundred five percent (105%) of the lesser of 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. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to the amount required by this sub-subdivision. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.

(c) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this section 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 section, plus interest at the rate established in G.S. 105-241.21, 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.

(d) Administration. – 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.

(e) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and taxpayer:

(1) The number of taxpayers claiming a refund allowed in this section.
(2) The total amount of purchases with respect to which refunds were claimed.
(3) The location of facilities with respect to which refunds were claimed.
(4) The total cost to the General Fund of the refunds claimed.

(f) Sunset. – This section is repealed for sales made on or after January 1, 2013."

SECTION 1.20. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.29B. Information to counties and cities.**

The Secretary must give information on refunds of tax made under this Article to a designated county or city official within 30 days after the official makes a written request to the Secretary for the information. For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list must include the name and address of each of these claimants and the amount of the refund received from each county covered by the request.

A claimant that has received a refund under this Article of tax paid to a county must give information on the refund to a designated official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the official to verify the request. If a claimant determines that a refund it has received under this Article is incorrect, the claimant must file an amended request for a refund.

For purposes of this section, a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information given to a county or city official under this section is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 1.21. G.S. 105-256(a) is amended by inserting a new subdivision between subdivisions (2) and (3) to read:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

(2a) By May 1 of each year, an economic incentives report that contains information on tax credits and tax refunds, itemized by credit or refund and by taxpayer, for the previous calendar year.

...."

PART II: OBSOLETE ECONOMIC INCENTIVES

SECTION 2.1. Article 3C of Chapter 105 of the General Statutes reads as rewritten:

"Article 3C.

"Tax Incentives For Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

...

~~(3) Large recycling facility. – A recycling facility that qualifies under G.S. 105-129.26(b).~~

...

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

~~(b) Large Recycling Facility. – A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:~~

~~(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.~~

~~(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.~~

~~(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.~~

...

(e) Reports. – The Department of Commerce and the Department of Revenue shall jointly 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 and location of ~~large and~~ major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of credits taken under this Article.

"**§ 105-129.27. Credit for investing in ~~large or~~ major recycling facility.**

(a) Credit. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. ~~An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.~~

...."

SECTION 2.2. Article 3G of Chapter 105 of the General Statutes is repealed.

PART III: CONFORMING CHANGES

SECTION 3.1. G.S. 75-29(a) reads as rewritten:

"(a) No person, firm or corporation shall advertise the sale of its merchandise using the term "wholesale" with regard to its sale prices, except as such word may appear in the company or firm name, unless such advertised sale or sales is, or are, to a customer or customers having a certificate of resale issued pursuant to G.S. 105-164.28 and recorded as required by G.S. 105-164.25 or unless the wholesale price is established by an independent agency not engaged in the manufacture, distribution or sale of such merchandise.

No person, firm or corporation shall utilize in any commercial transaction a company or firm name which contains the word "wholesale" unless such person, firm or corporation is

engaged principally in sales at wholesale as defined in G.S. 105-164.3. For the purposes of determining whether sales are made principally at wholesale or retail, all sales to employees of any such person, firm or corporation, all sales to organizations subject to refunds pursuant to ~~G.S. 105-164.14,~~G.S. 105-164.14 through G.S. 105-164.14B and all exempt sales pursuant to G.S. 105-164.13 shall be considered sales at wholesale. Sales of merchandise for delivery by the seller to the purchaser at a location other than the seller's place of business shall be considered sales at wholesale for the purposes of this section."

SECTION 3.2. G.S. 105-129.2(8a) reads as rewritten:

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

...

(8a) Eligible major industry. – A taxpayer is an eligible major industry for the purposes of this Article if the taxpayer is primarily engaged in one of the industries listed in ~~G.S. 105-164.14(j)(3)~~G.S. 105-164.14B and the Secretary of Commerce has certified that the owner of the facility will invest at least one hundred million dollars ($100,000,000) of private funds to acquire, construct, and equip a facility in this State to engage in one or more of those industries.

...."

SECTION 3.3. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08."

SECTION 3.4. G.S. 105-187.18(b) reads as rewritten:

"(b) Except for the exemption for sales a state cannot constitutionally tax, the exemptions ~~in G.S. 105-164.13~~ and ~~the~~ refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article."

SECTION 3.5. G.S. 105-187.23 reads as rewritten:

"**§ 105-187.23. Exemptions and refunds.**

(a) Exemptions. – Except for the exemption for sales a state cannot constitutionally tax, the exemptions allowed in ~~G.S. 105-164.13~~ Article 5 of this Chapter do not apply to the taxes imposed by this Article.

(b) Refunds. – The refunds allowed in ~~G.S. 105-164.14~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary."

SECTION 3.6. G.S. 105-187.33 reads as rewritten:

"**§ 105-187.33. Exemptions and refunds.**

Except for the exemption for sales a state cannot constitutionally tax, the exemptions and refunds allowed in ~~G.S. 105-164.13~~Article 5 of this Chapter do not apply to the taxes imposed by this Article. ~~The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.~~"

SECTION 3.7. 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 except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for

determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(6a) To furnish the county or city official designated under ~~G.S. 105-164.14(f)~~G.S. 105-164.29B a list of claimants that have received a refund of the county sales or use tax to the extent authorized in ~~G.S. 105-164.14(f).~~that statute.

...

~~(31) To verify with a related entity or strategic partner information relating to that entity provided by a taxpayer claiming a credit under Article 3G of this Chapter.~~

...

~~(35) To furnish to a taxpayer claiming a credit under Article 3G of this Chapter information from a related entity or strategic partner to the extent that information was used by the Secretary to adjust the amount of tax credit claimed by the taxpayer.~~

...

(37) To furnish the Department of Commerce with the information needed to complete the ~~studies~~ study required under ~~G.S. 105-129.2A and~~ G.S. 105-129.82.

...."

SECTION 3.8. 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 holidays contained in G.S. 105-164.13C and G.S. 105-164.13D, and the State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

PART IV: EFFECTIVE DATE

SECTION 4. This act becomes effective July 1, 2010. The first economic incentives report required by G.S. 105-256, as amended by this act, is due by May 1, 2011. The first claim for refund by a taxpayer whose sales tax refund period is changed by this act is due within six months after July 1, 2010, and applies to purchases during the time period not covered by the taxpayer's last claim for refund.

SENATE BILL 1215:
Economic Incentives Alignment & Changes

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Finance	**Date:**	June 30, 2010
Introduced by:	Sen. Jenkins	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***This bill would (1) harmonize sunset and reporting features and requirements across the State's various economic incentives, (2) create a single, unified economic incentives report that contains the information currently reported separately for each economic incentive, and (3) delete obsolete credits under Articles 3C and 3G. This bill was a recommendation of the Revenue Laws Study Committee.***

[As introduced, this bill was identical to H1880, as introduced by Rep. McComas, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

CURRENT LAW: Under current law, many of the economic incentives enacted as the Article 3 credits, the income tax credits in Article 4, and the sales and use tax benefits in Article 5 have some combination of reporting requirements[1] and sunset provisions; however, those requirements are not uniformly set out in each incentive. Where reporting requirements are set out, there are inconsistencies with respect to itemization by taxpayer,[2] itemization by credit,[3] the reporting entity,[4] and other miscellaneous differences.

Under current law, there are two economic incentives that are not utilized. The first is the credit in Article 3C for large recycling facilities. This credit was intended for Wisconsin Tissue; however, that company never located in North Carolina. The second credit is the credit for major computer manufacturing facilities in Article 3G. Other than the Dell facility for which the credit was enacted, no other taxpayer has utilized that credit.

BILL ANALYSIS: Part I of the bill requires data on each of the State's economic incentives to be reported in a single economic incentives report and establishes sunsets for various economic incentives, as provided in the chart below. Part II of the bill eliminates obsolete economic incentives. Part III of the bill makes conforming changes to various statutory provisions.

Section Number(s)	Effect
1.2	Adds requirement of itemization by taxpayer and by credit to the Art. 3B (business and energy tax credits) report
1.4, 1.6	Adds requirement of itemization by taxpayer to Arts. 3D (historic structure rehab) and 3E (low-income housing) report,

[1] Currently, there is no reporting requirement for Article 3H or for sales and use tax refunds for analytical services, for railroad intermodal facilities, or for vehicle parts for motorsports racing teams.

[2] While itemization by taxpayer for economic incentives credits is generally required, it is not currently required by the reporting requirements of Articles 3B, 3D, or 3E.

[3] Both Articles 3B and 3J contain multiple credits. While Article 3J's reporting provisions require itemization by credit, Article 3C's reporting provisions do not.

[4] Generally speaking, the reporting entity for each economic incentives report required is the Department of Revenue; however, Article 3C (in which Revenue and Commerce jointly report) and for the credit for utilizing State ports to export cigarettes while increasing employment (in which the corporation claiming the credit is the reporting entity) differ.

	respectively
1.8	Creates reporting requirement for Art. 3H (mill property rehab)
1.13	Transfers reporting requirement for G.S. 105-130.46 (credit for exporting cigarettes and increasing employment) from the corporation claiming the credit to DOR and harmonizes reporting requirements
1.17, 1.18, 1.19, 1.20	Separates and categorizes the current sales and use tax refunds, all of which are currently found in G.S. 105-164.14, into three types of refunds: (1) refunds that were enacted for non-industrial facilities for economic incentives purposes (found in the newly created G.S. 105-164.14A), (2) refunds that were enacted for industrial facilities for economic incentives purposes (found in the newly created G.S. 105-164.14B), and (3) refunds that were not enacted for economic incentives purposes (remaining in G.S. 105-164.14)
1.21	Creates the economic incentives report
1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16	Makes conforming and technical changes to the reporting requirement necessary to transfer the current, separate reports into a new, unified annual report.
1.5, 1.18	Proposes sunsets for Art. 3D historic structure rehab (2014), and for the sales and use tax refund for low-tier machinery (aligns sunset to Art. 3J), motorsports racing vehicle parts (2014), analytical services supplies (2013), and railroad intermodal facilities (2038).
2.1	Eliminates credit for large recycling facilities
2.2	Repeals Art. 3G (computer manufacturing)
Part III	Conforming changes

EFFECTIVE DATE: This act would become effective July 1, 2010, and includes effective date language that would ensure that sales and use tax refund eligibility would not be affected.

S1215-SMMC-20(e2) v1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2009-2010 SESSION

You are hereby notified that the Committee on **Commerce, Small Business, and Entrepreneurship** will meet as follows:

DAY & DATE: Wednesday, June 30, 2010
TIME: 1:00 pm
LOCATION: 1228 LB
COMMENTS: Please make every effort to arrive on time.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1246	Well Grouting Inspection/Bond Requirement.	Representative Haire
HB 1847	Promote Work Oppy. Tax Credit.	Representative Pierce Representative Bryant Representative Jones Representative Stewart
HB 1906	Regional Economic Recovery Housing Alliances.	Representative Pierce Representative Bryant
SB 1215	Economic Incentives Alignment & Changes.	Senator Jenkins

Respectfully,
Representative Tarleton, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **13** o'clock on **June 28, 2009**.

☒ Principal Clerk
☒ Reading Clerk – House Chamber

Susan Whitehead (Committee Assistant)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Tarleton (Chair) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☒Committee Substitute for
SB 1215 A BILL TO BE ENTITLED AN ACT TO INCREASE UNIFORMITY IN SUNSET AND REPORTING REQUIREMENTS OF ECONOMIC INCENTIVES TOOLS AND TO ELIMINATE NONUTILIZED ECONOMIC INCENTIVES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

H 1

HOUSE BILL 1906*

Short Title:	Regional Economic Recovery Housing Alliances.	(Public)
Sponsors:	Representatives Pierce, Bryant (Primary Sponsors); Bell, Faison, Harrison, Hughes, and Jones.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF COMMERCE TO WORK WITH LOCAL GOVERNMENTS AND REGIONAL COUNCILS OF GOVERNMENT TO CONVENE AND ORGANIZE REGIONAL ECONOMIC RECOVERY HOUSING ALLIANCES, AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON POVERTY REDUCTION AND ECONOMIC RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Commerce shall work with local governments through the regional councils of government to establish Regional Economic Recovery Housing Alliances in each of the three geographic regions of the State, mountains, central and coastal. The Department of Commerce shall assist the regional councils of governments in identifying activities that will help local governments develop and manage housing-related economic stimulus projects, thereby increasing economic activity, stimulating investment, and improving job retention and economic growth. The regional councils shall convene and organize regional housing recovery alliances, bringing together stakeholders including local governments, homebuilders, real estate professionals, community oriented banks, mortgage lenders, local economic developers, nonprofit community development organizations, housing counseling agencies, chambers of commerce, and major employers.

The councils of government shall use available funds to make pilot grants to an eligible local government in each of the three geographic regions, based on the presentation of a proposed work plan, to carry out the work plan, consistent with the purposes of this act.

SECTION 2.(a) The Regional Economic Recovery Housing Alliances created in accordance with Section 1 of this act shall mobilize housing related economic stimulus efforts at a regional level tailored to market conditions and the needs of local governments in the region. The Alliances may pursue any of the following purposes:

(1) Organize projects and financing that will put homebuilders, crews, and trades people back to work building and renovating homes.
(2) Keep families that are facing foreclosure in their homes.
(3) Prepare families for equity building homeownership.
(4) Assemble financing for economic development projects, including affordable housing projects, from federal, State and other sources.
(5) Promote construction projects that will meet regional needs and foster sound, sensible growth.

SECTION 2.(b) The Regional Economic Recovery Housing Alliances shall build on work currently under way in many regions through the federal EDA, HOME, CDBG, and Weatherization programs, as well as programs of the North Carolina Housing Finance Agency,

Department of Environment and Natural Resources, the North Carolina Rural Economic Development Center, and the Department of Commerce in order to leverage the use of public investments.

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

HOUSE BILL 1906:
Regional Economic Recovery Housing Alliances

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III	**Date:**	June 30, 2010
Introduced by:	Reps. Pierce, Bryant	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1906 directs the Department of Commerce to work with local governments and regional councils of government to organize regional economic recovery housing alliances. This bill was recommended by the Joint Legislative Study Commission on Poverty Reduction and Economic Recovery. The bill is very similar to Senate Bill 970 which was introduced in the 2009 Session.

[As introduced, this bill was identical to S1297, as introduced by Sen. Jones, which is currently in Senate Commerce.]

BILL ANALYSIS:

House Bill 1906 directs the Department of Commerce to work with regional councils of government to establish Regional Economic Recovery Housing Alliances in each of the State's three regions; the mountains, the Piedmont, and the coastal region.

The regional councils of government are directed to use available funds to make pilot grants to a local government in each of the regions to carry out a work plan consistent with the purposes of the act.

The Regional Economic Recovery Housing Alliances would be directed to mobilize housing-related economic stimulus efforts at a regional level tailored to market conditions and needs of local governments in the region. The Alliances are authorized to pursue the following purposes:

- Organize projects and financing that will put homebuilders, crews, and trades people back to work building and renovating homes.
- Keep families that are facing foreclosure in their homes.
- Prepare families for equity building homeownership.
- Assemble financing for economic development projects, including affordable housing projects from federal, State, and other sources.
- Promote construction projects that will meet regional needs and foster sound, sensible growth.

The Alliances are directed to build on work currently under way through several federal programs, as well as programs of the North Carolina Housing Finance Agency, the Department of Environment and Natural Resources, the North Carolina Rural Economic Development Center, and the Department of Commerce in order to leverage the use of public investments.

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

Bill Gilkeson, counsel to the Joint Legislative Study Commission on Poverty Reduction and Economic Recovery, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1847*

Short Title:	Promote Work Oppy. Tax Credit.	(Public)
Sponsors:	Representatives Pierce, Bryant, Jones, Stewart (Primary Sponsors); Faison, Farmer-Butterfield, Gill, Hughes, Lucas, Mobley, Parmon, Wainwright, and Wray.	
Referred to:	Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE EMPLOYMENT SECURITY COMMISSION TO PROMOTE THE WORK OPPORTUNITY TAX CREDIT AND EDUCATE EMPLOYERS ABOUT IT, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON POVERTY REDUCTION AND ECONOMIC RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. The Employment Security Commission shall promote the Work Opportunity Tax Credit as provided by G.S. 105-129.16G and educate employers about it.

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

HOUSE BILL 1847:
Promote Work Oppy. Tax Credit

2009-2010 General Assembly

Committee:	House Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations	**Date:**	June 30, 2010
Introduced by:	Reps. Pierce, Bryant, Jones, Stewart	**Prepared by:**	Drupti Chauhan Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1847 would direct the Employment Security Commission to promote the Work Opportunity Tax Credit and educate employers about the Credit. The bill is a recommendation of the Joint Legislative Commission on Poverty Reduction and Economic Recovery.

[As introduced, this bill was identical to S1233, as introduced by Sen. Jones, which is currently in Senate Commerce.]

CURRENT LAW: G.S. 105-129.16G provides that a taxpayer who is allowed a Work Opportunity Tax Credit (WOTC) under the Internal Revenue Code is also allowed a State income tax credit. The amount of the State credit is equal to 6% of the amount of credit allowed under the Code for wages paid during the taxable year for positions located in the State. The provision expires for taxable years beginning on or after January 1, 2012.

BILL ANALYSIS: House Bill 1847 would direct the Employment Security Commission to promote the WOTC and educate employers about it. The bill is a recommendation of the Joint Legislative Commission on Poverty Reduction and Economic Recovery.

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

BACKGROUND: The WOTC is a federal tax credit incentive for private for-profit businesses for hiring individuals from specific target groups to help them move from welfare to economic self-sufficiency. The target groups include: TANF recipients; veterans who are members of families receiving or recently received food stamps; ex-felons; 18-39 year old residents of one of the federally designated Empowerment Zone, Enterprise Community or Renewal Community; vocational rehabilitation recipients; 16-17 year old residents of an Empowerment Zone, Enterprise Community or Renewal Community hired between May 1 and September 15; 18-39 year old members of families receiving food stamps; supplemental security income recipients; long-term TANF recipients (receiving payments for at least 18 consecutive months ending on the hiring date); unemployed veterans; and disconnected youth (individuals between 16 and 25 who are not in school and not readily employable due to lack of basic skills).

The tax credit ranges from $1,200 for each new summer youth hire to $9,000 for reach new long-term family assistance recipient hire over a 2-year period.

H1847-SMRQ-159(e1) v3

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Dickson, Tarleton (Chairs) for the Committee on COMMERCE, SMALL BUSINESS, AND ENTREPRENEURSHIP.

☐ Committee Substitute for

HB 1847 A BILL TO BE ENTITLED AN ACT TO DIRECT THE EMPLOYMENT SECURITY COMMISSION TO PROMOTE THE WORK OPPORTUNITY TAX CREDIT AND EDUCATE EMPLOYERS ABOUT IT, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON POVERTY REDUCTION AND ECONOMIC RECOVERY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.