2009-2010

SENATE
COMMERCE

MINUTES

Senate Commerce Committee
2009-2010

Sen. R.C. Soles, Jr., Chair Room 2022, LB 733-5963 RC.Soles@ncleg.net	
Sen. David Hoyle, Vice Chair Room 300-A, LOB 733-5734 David.Hoyle@ncleg.net	Sen. Floyd McKissick, Vice Chair Room 621, LOB 733-4599 Floyd.McKissick@ncleg.net
Sen. Tony Rand, Vice Chair Room 300-C, LOB 733-9892 Tony.Rand@ncleg.net	Sen. Tom Apodaca Room 1127, LB 733-5745 Tom.Apodaca@ncleg.net
Sen. Phil Berger Room 1026, LB 733-5708 Phil.Berger@ncleg.net	Sen. Doug Berger Room 622, LOB 715-8363 Doug.Berger@ncleg.net
Sen. Harris Blake Room 517, LOB 733-4809 Harris.Blake@ncleg.net	Sen. Julia Boseman Room 309, LOB 715-2525 Julia.Boseman@ncleg.net
Sen. Pete Brunstetter Room 522, LOB 733-7850 Peter.Brunstetter@ncleg.net	Sen. Debbie Clary Room 523, LOB 715-3038 Debbie.Clary@ncleg.net
Sen. Katie Dorsett Room 2106, LB 715-3042 Katie.Dorsett@ncleg.net	Sen. Tony Foriest Room 332, LOB 301-1446 Tony.Foriest@ncleg.net
Sen. James Forrester Room 1129, LB 715-3050 James.Forrester@ncleg.net	Sen. Linda Garrou Room 627, LOB 733-5620 Linda.Garrou@ncleg.net

Sen. Eddie Goodall Room 1414, LB 733-7659 Eddie.Goodall@ncleg.net	Sen. Steve Goss Room 1118, LB 733-5742 Steve.Goss@ncleg.net
Sen. Malcolm Graham Room 620, LOB 733-5650 Malcolm.Graham@ncleg.net	Sen. Neal Hunt Room 1102, LB 733-5850 Neal.Hunt@ncleg.net
Sen. Jim Jacumin Room 1113, LB 715-7823 Jim.Jacumin@ncleg.net	Sen. Clark Jenkins Room 308, LOB 715-3040 Clark.Jenkins@ncleg.net
Sen. Dan Blue Room 314, LOB 733-5752 Dan.Blue@ncleg.net	Sen. Martin Nesbitt Room 300-B, LOB 715-3001 Martin.Nesbitt@ncleg.net
Sen. Bill Purcell Room 625, LOB 733-5953 William.Purcell@ncleg.net	Sen. Bob Rucho Room 515, LOB 733-5655 Bob.Rucho@ncleg.net
Sen. Larry Shaw Room 311, LOB 733-9349 Larry.Shaw@ncleg.net	Sen. Josh Stein Room 1028, LB 715-6400 Josh.Stein@ncleg.net
Sen. Richard Stevens Room 406, LOB 733-5653 Richard.Stevens@ncleg.net	Sen. Don Vaughan Room 411, LOB 733-5856 Don.Vaughan@ncleg.net

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

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

O. Walker Reagan
Director

February 26, 2009

The Honorable R.C. Soles, Jr., Chair
Committee on Commerce
North Carolina Senate
16 West Jones Street, Room 2022
Raleigh, NC 27601-2808

Dear Senator Soles:

I have asked Ms. Wendy Graf Ray to serve as the coordinating staff person (point person) for the committee staff's efforts for the Committee on Commerce. I would ask that you and your committee clerk consider Ms. Ray 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. Ray 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. Marc Basnight, President Pro Tempore
Mr. George Hall
Mr. Tim Hovis
Ms. Wendy Graf Ray
Mr. Steve Rose
Ms. Karen Cochrane Brown
Mr. Brian Peck
Ms. Christy Henson

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

SENATE COMMERCE COMMITTEE
Tuesday, February 17, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on February 17, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator Soles presided.

Senator Soles started the initial meeting of the Senate Commerce Committee by asking members and staff to introduce themselves. He then recognized the Committee's pages: Courtney Dupree, Margaret Leak, Kristine Kapatos, and Victoria Pace, all from Raleigh.

S.B. 5 – Continuing Crossbow Permit/Dealers & Manufacturers.

Senator Stevens was recognized to explain the bill and offer an amendment. Senator Stevens then moved to adopt the amendment and the motion carried. Senator Rand moved for a favorable report of the bill as amended and the motion carried. A copy of the bill, the amendment and the summary is attached.

S.B. 12 – Ban Mobile Phone Use While Driving.

Senator Dannelly was recognized to explain the proposed committee substitute. Senator McKissick offered an amendment that clarified the definitions of moving vehicles and emergency vehicles and moved for its adoption. The motion carried. Senator Nesbitt offered an amendment to reduce the penalties and motioned for its adoption. The motion carried. Henry Jones, a lobbyist for the Alliance of Automobile Manufacturers was recognized to discuss the bill. Due to the time, Senator Soles adjourned the meeting. A copy of the proposed committee substitute, the summary and the two amendments is attached.

The meeting adjourned at 12:00 PM.

Senator R.C. Soles, Jr., Chair
Senate Commerce Committee

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, February 17, 2009

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

FAVORABLE, AS AMENDED

S.B. 5 Continuing Crossbow Permit/Dealers & Manufac.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
Christy Agner	Governor's office
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
[illegible]	First Citizens Bank
[illegible]	BB&T
JULIAN PHILPOTT	NC FARM BUREAU
William Plumley	research assistant
Thomas Moore	Edmisten & Woltz
SCOTT GARDNER	DUKE ENERGY
Loretta Bonds	News 14
PATRICK HANNAH	Liberty Mutual

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Name of Committee

Feb. 17, 2009 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
R. Reed Williams	WGR
Bob Condon	Wake Co ARES/ Amateur Radio
GARY PEARCE	Wake County ARES/ Amateur Radio
Chip Byrd	NCMS
Rose Williams	NC DOI
Robert Paschal	Young Moore
Jimmy Fullbright	Hunton & Williams
Wendy Kelly	520 Wicker
Lori Ann Happus	CTIA
Casandra White	AOC
Nathan Batts	NCBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Name of Committee

Feb. 17, 2009 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stool	NCBA
[illegible]	BSA
Butch Gunnells	NC Ben A
[illegible]	AT&T
Susan Valaam	Nationwide
John McMillan	MFS
Kathryn Hawkins	Progress Energy
Roz Savitt	NC Child Care Coalition
Cameron Henley	Electric Cities of NC
Rob Thompson	Covenant w/ NC's Children

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

Feb. 17, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
Steve Brewer	EMBARQ
Marty Bocock	EMBARQ

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	HMRS
	PBV
	McGlees Consulting
	Progress Energy
Bill McAulay	PSNC Energy
	GSK
	JD, AL, PA
	MUC
	NCRMA
	APPA-SOC
	News & Observer / Charlotte Observer

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pamela Schore	North Carolina Assoc. of School Admin. - Raleigh
Kristi Huff	NC Health Care Facilities Assoc.
DAVID BARNES	Poyner Spruill
Joe Stewart	NC Chamber
John Bowdish	Astra Zeneca
Sherika Reid	IOG
R W Kaylor	Verizon Wireless
L. T Pace	Verizon
Lisa Piercy	Ragsdale Liggett PLLC
Bill Waiglo	Verizon

Senate Commerce Committee
Tuesday, February 17, 2009, 11:00 AM
1027 - LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 5	Continuing Crossbow Permit/Dealers & Manufac.	Sen. Stevens
SB 12	Ban Mobile Phone Use While Driving.	Sen. Dannelly

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 5*

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 THAT OBTAINS A PERMIT FOR THE SALE, RECEIPT, OR OTHER TRANSFER OF A CROSSBOW IS DEEMED TO HAVE A CONTINUING PERMIT THAT AUTHORIZES THE FUTURE SALE, GIVEAWAY, TRANSFER, PURCHASE, OR RECEIPT OF CROSSBOWS BY THE CORPORATION 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, if a corporation that is a manufacturer of crossbows, wholesale dealer of crossbows, or retail dealer of crossbows obtains a permit pursuant to this Article for the sale, giveaway, transfer, purchase, or receipt of a crossbow, the permit is deemed to be a continuing permit with no expiration date that satisfies the permitting requirements under this Article for each future sale, giveaway, transfer, purchase, or receipt of a crossbow by the corporation.

(b) A sheriff who issues a continuing permit under this section shall note in writing on the permit that, pursuant to this section, the permit is deemed to be a continuing permit with no expiration date.

(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.

SENATE BILL 5: Continuing Crossbow Permit/Dealers & Manufac

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	February 16, 2009
Introduced by:	Sen. Stevens	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Co-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 and the manufacturer or dealer will not be required to renew the permit every five years. 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.***

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 first obtains a permit from the sheriff of the county in which the purchaser or receiver resides, or unless the purchaser 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 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 transfers by the corporation.

The sheriff is required to make a note on the permit indicating that the permit does not expire.

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

The bill also relieves manufacturers and wholesale dealers from the obligation of keeping records of all sales. Retail dealer are still required to keep records of sales to consumers.

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

S5-SMRO-1(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 5*

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

S5-ARO-2 [v.1]

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

Date _____,2009

Senator _____

moves to amend the bill on page 1, lines 3-7, by rewriting the lines to read:

"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";

And on page 1, lines 17-25, by rewriting the lines to read:

"(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 a crossbow from any person, firm, or corporation offering to sell or dispose of the crossbow. 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.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S5-ARO-2-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 12
PROPOSED COMMITTEE SUBSTITUTE S12-CSSU-1 [v.3]

2/16/2009 3:44:08 PM

Short Title: Ban Mobile Phone Use While Driving. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE OR ACCESSING ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.4 reads as rewritten:

"**§ 20-137.4. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – As defined in G.S. 20-137.3(a)(1).

(2) Emergency situation. – Circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a ~~school bus.~~motor vehicle.

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2). This term does not include two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the Amateur Radio Service.

(4) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(5) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

(b) Offense. – Except as otherwise provided in this section, no person shall operate a ~~school bus~~motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the ~~school bus~~vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone in a stationary ~~school bus.~~vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone for the ~~sole purpose of communicating in an emergency situation.~~following:

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or

privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone to make or receive a call only and not for the purpose of accessing additional technology. This exception does not apply to a person driving a school bus.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones or additional ~~technology associated with a mobile telephone by operators of school buses.~~technology.

(f) Penalty. – A violation of this section by a person driving a school bus shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). A violation of this section by any other driver who is 18 years old or older and not subject to the provisions of G.S. 20-137.3 shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a ~~school bus.~~motor vehicle."

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

SENATE BILL 12:
Ban Mobile Phone Use While Driving

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	February 17, 2009
Introduced by:	Sen. Dannelly	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S12-CSSU-1		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 12 would prohibit a person from using a mobile phone or additional technology associated with a mobile phone while operating a motor vehicle, with the following exceptions:***

- ***Use of mobile phone in emergency situation.***
- ***Use by law enforcement, fire department, or ambulance operator, while performing official duties.***
- ***Use of hands-free mobile phone to make or receive calls only.***

Violation of this provision would be an infraction punishable by a fine of $100 and cost of court. No drivers license or insurance points would be assessed.

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), or by a person operating a school bus (G.S. 20-137.4), with certain limited exceptions. See chart under Bill Analysis for additional details.

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Wireless telephone service" is a service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 12 would prohibit the use of a mobile telephone or additional technology associated with a mobile telephone by a person operating a motor vehicle while the vehicle is in motion. "Mobile telephone" and "wireless telephone service" would be defined as they are in current law pertaining to mobile phone use by school bus drivers and persons under the age of 18, and would include hand held and hands-free devices. The PCS would make clear that "mobile telephone" does not include two-way radios used by amateur radio operators licensed by the Federal Communications Commission.

The PCS would include the following exceptions to the prohibition on mobile telephone use:

- Use of mobile phone in an emergency situation to communicate with an emergency response operator; a hospital, physician's office, or health clinic; an ambulance service; or law enforcement.
- Use of mobile phone in the performance of official duties by a law enforcement officer, a member of a fire department, or the operator of an ambulance.
- Use of a hands-free device to make or receive calls only and not to access additional technology. This exception would not apply to school bus drivers.

A violation of this prohibition would be an infraction punishable by a fine of $100 and court costs. No drivers license points or insurance surcharge would be assessed.

[redacted]	Prohibition	Exceptions	Penalty
G.S. 20-137.3 ***[CURRENT LAW]***	Persons under the age of 18 may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • To call parent, legal guardian, or spouse	• Infraction • $25 fine • No drivers license points, insurance surcharge, or court costs
G.S. 20-137.4 ***[CURRENT LAW]***	Person operating a school bus, activity bus, or any vehicle transporting school children for compensation, may not use mobile phone or associated technology while the vehicle is in motion.	• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator and passengers	• Class 2 misdemeanor (1-30 days community punishment with no prior convictions) • Minimum $100 fine • No drivers license points or insurance surcharge
PCS for Senate Bill 12	No person may use a mobile phone while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • Law enforcement officer, member of fire department, operator of ambulance, in the performance of official duties • Use of hands-free mobile phone to make or receive calls only – *does not apply to school bus drivers*	• Infraction • $100 fine and court costs • No drivers license points or insurance surcharge

EFFECTIVE DATE: The act would be effective December 1, 2009, and would apply to offenses committed on or after that date.

S12-SMSU-2(CSSU-1) v4

§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

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

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

...

SENATE BILL 12

Short Title:	Ban Mobile Phone Use While Driving.	(Public)
Sponsors:	Senators Dannelly; Dorsett, Forrester, Garrou, Goss, Jones, Malone, and Purcell.	
Referred to:	Commerce.	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE OR ACCESSING ADDITIONAL TECHNOLOGY UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.4 reads as rewritten:

"**§ 20-137.4. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – As defined in G.S. 20-137.3(a)(1).

(2) Emergency situation. – Circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus.

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

(4) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(5) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

(b) Offense. – Except as otherwise provided in this section, no person shall operate a ~~school bus~~motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the ~~school bus~~vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone in a stationary ~~school bus.~~vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone for the ~~sole purpose of communicating in an emergency situation.~~following:

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone to make a call only and not for the purpose of accessing additional technology.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones or additional ~~technology associated with a mobile telephone by operators of school buses.~~technology.

(f) Penalty. – A violation of this section by a person driving a school bus shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). A violation of this section by any other driver who is 18 years old or older and not subject to the provisions of G.S. 20-137.3 shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a ~~school bus.~~motor vehicle."

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

Dee Hodge (Sen. Dannelly)

From: Marjorie Davis [marjoriecatedavis@gmx.com]
Sent: Wednesday, February 04, 2009 11:05 PM
To: Sen. Charlie Dannelly
Subject: Vote On Ban on Cell Phone Use

Dear Senator Dannelly,

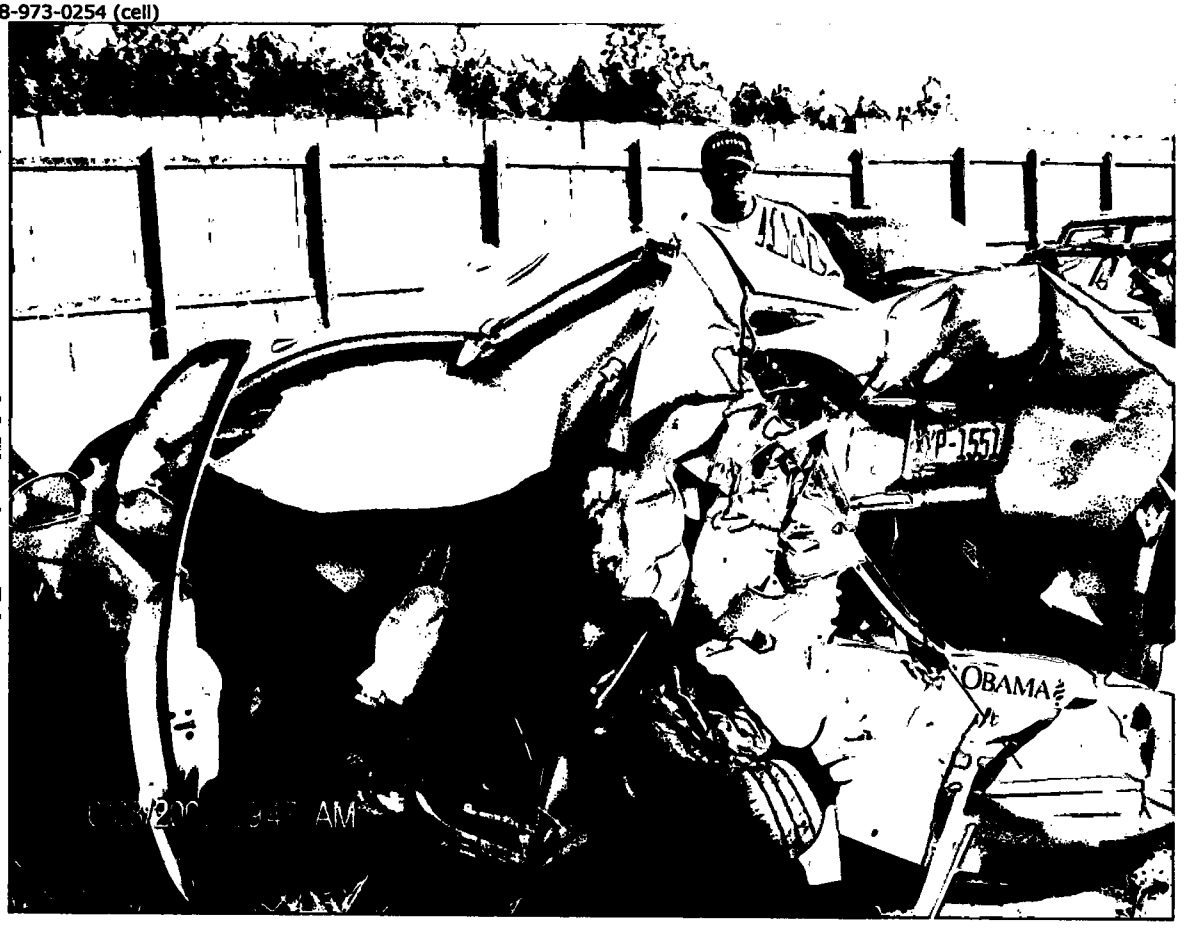
I am emailing you a picture of my car after I was rearended on I40 W by another driver who was traveling 70mph and on her cell phone.

I was searching the NCGA website and noticed you have introduced a bill to ban cell phone usage while operating a motorvehicle. I understand you are from Mecklenburg County and I am from Johnston County, but I wanted to share my story with you to let you know I support your efforts for this ban.

It was a clear morning on 10/7/2008 and I had just entered I40 from NC42 in Garner. I was heading to Chapel Hill for work and at about mile marker 311, I was stopped due to an accident at Jones Sausage Road (mile marker 303). I looked out my rear view mirror to see this BIG BLACK SOMETHING come flying up behind me. The other driver pushed me into a third car who was also pushed into then a 4th car. The driver who hit me was on her cell phone traveling 70mph and didn't even break. I had just dropped my 4 1/2 daughter off at school not even 4miles/10minutes before the accident. As you can see by this photo, she would have been killed.

I urge you to push for the Ban on cell phone usage while driving. I will email my Senator as well to urge him to do the same.

Thank You,
Marjorie Davis
122 Serenity Drive
Smithfield, NC 27577
978-973-0254 (cell)



VVIP

$ Donate Now Shopping Cart

NSC.org

Educate and influence people to prevent accidental injury and death

Cell Phone Use While Driving Fact Sheet

- Using cell phones while driving is a very high risk behavior with significant impact on crashes and society. More than 50 peer-reviewed scientific studies have identified the risks associated with cell phone use while driving.
- Drivers who use cell phones are four times more likely to be in a crash while using a cell phone. (1997 *New England Journal of Medicine* examination of hospital records and 2005 Insurance Institute for Highway Safety study linking crashes to cell phone records).
- There is no difference in the cognitive distraction between hand-held and hands-free devices. (Simulator studies at the U. of Utah.)
- Cell phone use contributes to an estimated 6 percent of all crashes, which equates to 636,000 crashes, 330,000 injuries, 12,000 serious injuries and 2,600 deaths each year. (Harvard Center of Risk Analysis).
- 80 percent of crashes are related to driver inattention. There are certain activities that may be more dangerous than talking on a cell phone. However, cell phone use occurs more frequently and for longer durations than other, riskier behaviors. Thus, the #1 source of driver inattention is cell phones. (Virginia Tech 100-car study for NHTSA)
- It is estimated that more than 100 million people use cell phones while driving. (CTIA – The Wireless Association reports 270 million cell phone subscribers. A Nationwide Insurance public opinion poll showed 81 percent of the public admit to talking on a cell phone while driving).
- The annual cost of crashes caused by cell phone use is estimated to be $43 billion (Harvard Center for Risk Analysis).
- Talking to a passenger while driving is significantly safer than talking on a cell phone. (University of Utah)
- Many businesses understand the risk and are already taking action. Among NSC members that responded to a survey, 45 percent (651 of 1453 respondents) said their companies had a cell phone policy of some kind. Of those, 22 percent said they re-engineered their processes to accommodate the policy and 85 percent said the policy did not affect productivity.

Other Resources

These organizations offer additional research and other information on distracted driving and related issues:

- Nationwide Insurance ®
- National Highway Traffic Safety Administration (NHTSA)
- National Transportation Safety Board (NTSB)
- U.S. Department of Transportation
- American Medical Association *Policy: texting while driving is a public health risk*

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1121 Spring Lake Drive
Itasca, IL 60143-3201
(630) 285-1121
(630) 285-1315 fax
info@nsc.org

POLICY STATEMENT

of

ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO

Adopted by the ARRL Executive Committee, January 30, 2009

Mobile Amateur Radio Operation

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL) is the principal advocate for the interests of FCC-licensed Amateur Radio operators in the United States. Obtaining an FCC Amateur Radio license requires the passing of a written examination on regulations, operating practices, electronics theory, and safety. There are approximately 680,000 licensed Amateur Radio operators in the United States. Amateur Radio operators provide emergency and public service communications on a volunteer, uncompensated basis. Amateur Radio is an avocation, which is intended by the Federal Communications Commission to encourage and promote technical self-training, international goodwill, non-commercial communication service (particularly with respect to emergency communications), advancement of radio technology, and expansion of the existing reservoir of trained operators, technicians, and electronics experts. Amateur Radio operators are responsible for many advances in electronics and telecommunications technology over the past 100 years.

In the course of preparing for and conducting emergency, disaster and other public service communications, Amateur Radio operators routinely equip their motor vehicles with two-way radios, operated most often with hand-held microphones. The radios are typically installed in the vehicles and utilize fixed mounted speakers. Unlike cellular telephones, the speakers are not held to the face; the radios remain in the receive mode most of the time; transmissions typically are brief and infrequent. The microphone is held only when a transmission is being made or is imminent, and otherwise is stowed in a position where the operator can reach it without removing his or her eyes from the road. Amateur operators often conduct mobile communications as participants in networks of stations, controlled often by a fixed station, not unlike commercial dispatch mobile radio systems. Radio amateurs have regularly used mobile two-way radio systems for the past 70 years. The ARRL is aware of no evidence that such operation contributes to driver inattention. Quite the contrary: radio amateurs are public service-minded individuals who utilize their radio-equipped motor vehicles to assist others, and they are focused on driving in the execution of that function.

The States encourage mobile amateur radio operation as a public benefit. Every State issues license plates to motor vehicles of licensed radio amateurs showing their FCC-assigned call letters, in order to identify a particular vehicle as a mobile-radio equipped vehicle. The United States Congress, in 1994, in a Joint Resolution (S.J. Res. 90/H.J. Res. 199 (1994), in "recognizing the achievements of radio amateurs, and to establish support for such amateurs as national policy" found and declared, among other things, that: "reasonable accommodation should be made for the effective operation of

amateur radio from residences, private vehicles and public areas, and that regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit."

The ARRL acknowledges numerous and increasing instances of state legislative proposals (and occasionally municipal ordinance proposals) to curb the use of cellular telephones while operating motor vehicles, ranging from prohibitions on hand-held telephones to prohibitions on all forms of electronic devices. These statutory proposals would supplement the more generalized motor vehicle code requirements that exist in various forms in virtually all States, which require operators of motor vehicles to pay full time and attention to the operation of the vehicle while driving. ARRL understands that driver inattention is a leading cause of automobile accidents, and it is not unreasonable to be concerned about substantial distractions to drivers of motor vehicles.

Typically, the intention of this type of legislation is to prohibit the operation of cellular telephones specifically, and devices incorporating full duplex wireless telephones, while operating a motor vehicle. Some such statutes prohibit the use of such devices while driving unless they incorporate "hands-free" peripheral attachments. There is substantial variation in the definition of the devices regulated by the legislation. Often, the proposed statutory language broadly prohibits operation of "mobile communication devices" or "mobile electronic devices" while driving. Whether or not intentionally, some of these proposed statutes or ordinances would in fact, or could be interpreted to prohibit the operation of Amateur Radio equipment by drivers of motor vehicles. Often, there are exemptions to the general prohibition of mobile electronic or communication devices while driving. Some legislation specifically exempts devices that are operated on a hands-free basis. Other exemptions reference specific types of devices or radio services (such as public safety land mobile radio, Citizen's Radio Service or business and industrial land mobile radio) which are not intended to be restricted. Some legislation specifically exempts licensed Amateur Radio mobile operation; some does not.

Amateur Radio mobile operation is ubiquitous, and Amateur Radio emergency and public service communications, and other organized Amateur Radio communications activities and networks necessitate operation of equipment while some licensees are driving motor vehicles. Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than, listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile radio, private land mobile radio, or citizen's radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect. Nevertheless, ARRL encourages licensees to conduct Amateur communications from motor vehicles in a manner that does not detract from the safe and attentive operation of a motor vehicle at all times.

Given the necessity of unrestricted mobile Amateur Radio communications in order for the benefits of Amateur Radio to the public to continue to be realized, ARRL urges state and municipal legislators considering restrictions on mobile cellular telephone

operation to (I) narrowly define the class of devices included in the regulation so that the class includes only full duplex wireless telephones and related hand-held or portable equipment as defined below; or alternatively (II) specifically identify licensed Amateur Radio operation as an excluded service.

Suggested statutory language for state motor vehicle codes follows:

(Definition)

"Cellular Telephone (or Mobile Communications/Electronic Device)" as used herein means hand held or portable electronic equipment capable of providing full duplex, wireless voice or data communications via the public switched telephone network between two or more people. Also included are devices for text messaging or paging, personal digital assistants, laptop computers, equipment capable of playing video games or video disks, or equipment on which digital photographs are taken or displayed.

(Prohibited Acts)

Section _____ **Use of cellular telephones or mobile communications/electronic devices prohibited.** No person shall use a cellular telephone (or mobile communications or electronic device) in any manner, including the reading or sending of text or electronic messages on the telephone, while operating a motor vehicle unless the telephone is specifically designed to allow hands-free operation and the telephone is so used. This section shall not apply to a person who is using the cellular telephone (or mobile communications/electronic device): (a) While the vehicle is lawfully parked; or (b) To contact or receive calls from an emergency response vehicle or agency.

(Exclusion)

A mobile (electronic/communication) device does *not* include audio equipment or any equipment installed in the vehicle to provide navigation or emergency information to the driver, or video entertainment exclusively to passengers in the back seat. Nor does it include two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the Amateur Radio Service.

ARRL – the national association for Amateur Radio
225 Main Street
Newington, CT 06111
Regulatory Information Telephone: 860-594-0236
Fax: 860-594-0259
Contact: reginfo@arrl.org

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 12 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) McCissick
Sen.)

moves to amend the bill on page 1, lines 24-25

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"~~school bus is in motion.~~ vehicle's motor is running." This prohibition shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone in a stationary ~~school bus~~ vehicle if the motor is not running."; and

on page 2, lines 1-2, by rewriting the line to read:

"privately owned ambulance company or service; a fire department; a law enforcement agency; or an immediate family member."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. SB 12 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Sen) Nesbitt

1 moves to amend the bill on page 2, line 16

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5 "fine of twenty-five dollars ($25.00) and no

6 court costs. No drivers license points on"

7

8

9

10

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16

17

18

19

SIGNED Marta Nesbitt

ADOPTED Adopted FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE COMMERCE COMMITTEE
Tuesday, February 24, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on February 24, 2009, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator Soles presided. Lauren Frederick, James Compton and Alaina Doyle of Wake County; Fred Irving of Cabarrus County and Fahim Lodhi of Cumberland County served as pages.

S.J.R. 90 – Utilities Commission Confirmation.

Senator Soles recognized the Utilities Commission members attending the meeting: Bobby Owens, Lorinzo Joyner, Howard Lee and Bill Culpepper.

Steve Rose, a staff attorney with the Research Division, was recognized for an overview of the bill and its attachments, and for a brief description of the Utilities Commission.

Edward Finley, Jr., the Utilities Commission Chair, was recognized to explain the Commission's duties of regulating the fees and services of all public utilities in North Carolina. He also recommended Brian Beatty and Susan Rabon for their years of public service.

Andy Willis, Senior Advisor to Governor Perdue and Director of Governmental Affairs, was recognized. He recommended the confirmation of Brian Beatty and Susan Rabon and highlighted their careers. He also stated that Governor Perdue recommended the confirmation.

Brian Beatty was recognized and he thanked Governor Easley and Governor Perdue for their support, gave a brief history of his service to the State, and asked the Commerce Committee to confirm his appointment.

Susan Rabon was recognized. She thanked the Committee for their time and support, spoke of her 16 years of public service and was available to answer questions.

Senator Apodaca commended Commissioner Beatty and Commissioner Rabon, but expressed concern about the number of attorneys serving on the Utilities Commission. He would like to see more business owners appointed in the future. Senator Apodaca then moved for a favorable report and the motion carried. A copy of the Senate Joint Resolution, the summary, Governor Easley's appointment letter, the appointees' biographical information, and statements of economic interests is attached.

The meeting adjourned at 11:30 AM.

Senator R.C. Soles, Jr., Chair
Senate Commerce Committee

DeAnne Mangum, Committee Clerk

DeAnne Mangum (Finance CA)

From: Joyce Hodge (Senate LA Director)
Sent: Thursday, February 19, 2009 2:23 PM
To: @Senate/Commerce

SENATE COMMERCE COMMITTEE MEETING - 02-24-2009

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	February 24, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SJR 90	Utilities Commission Confirmation.	Senator Soles, Jr.

Senator R. C. Soles, Jr., Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, February 24, 2009

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

FAVORABLE

S.JR. **90** Utilities Commission Confirmation.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, February 24, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SJR 90 Utilities Commission Confirmation. Senator Soles, Jr.

- Edward S. Finley, Jr., Utilities Commission Chair
- Brian Beatty, Commissioner
- Susan Rabon, Commissioner

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 24, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lorenzo Turner	NC Utilities Commission
Bobby Hamm	"
Jeff Allen	NMRS
Leon Killian	"
Andy Willis	Gov's Office
Bill Culpepper	Utilities Commission
John Hall	NWC
Cam Cavey	BPMHL
Sandy Sands	WCSR
Mike Krzyzewski	DU
Paul Stock	NCBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 24, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Allison Mueller	Charlotte Chamber
Nathan Batts	NCBA
Patrick Buffkin	NMRS
Dana Simpson	Smith Anderson
Joyce Petera	JP Assoc
Carmen Hawley	Electricities of NC.
Daniel Baum	K+L Gates
Marty Bocock	Embarq

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 24, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Gruber	Public Staff UCI, I Co.
Mark Benson	AT&T
Annette Newkirk	Governors Office
Ed Roach	McGuire Woods
Michael Thompson	Dominion
Howard Lee	Utility Board
Bill McAulay	PSNC Energy
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
	MHM

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 24, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Steve Brewer	EMBARQ
John Goodman	NC Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — Feb. 24, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	JD, AL, PA
[signature]	NCSA
David Barnes	Poyner Spruill
Sharon Miller	CUCA
Mac Ellis	NC Utilities Commission
Pam Melton	Embarq
[signature]	NCUC
[signature]	NFIB
Connie Wilson	CWC
Dianna Downey	NCUC Public Staff
Lea Anthony	Progress Energy Carolinas

SENATE JOINT RESOLUTION 90

Sponsors:	Senator Soles.
Referred to:	Commerce.

February 10, 2009

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF SUSAN RABON AND BRYAN BEATTY TO THE UTILITIES COMMISSION.

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

Whereas, vacancies have occurred on the North Carolina Utilities Commission due to the resignation of Sam J. Ervin IV and James Y. Kerr II; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of his appointees, Susan Rabon to serve the remainder of the term expiring June 30, 2015, and Bryan Beatty to serve the remainder of the term expiring June 30, 2009; Now, therefore,

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

SECTION 1. The appointment of Susan Rabon to the North Carolina Utilities Commission for the remainder of the term of Sam J. Ervin IV expiring June 30, 2015, is confirmed.

SECTION 2. The appointment of Bryan Beatty to the North Carolina Utilities Commission for the remainder of the term of James Y. Kerr II expiring June 30, 2009, is confirmed.

SECTION 3. This resolution is effective upon ratification.

SENATE JOINT RESOLUTION 90: Utilities Commission Confirmation

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	February 23, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Steven Rose
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***SJR 90 confirms the appointments of Susan Rabon and Bryan Beatty to the Utilities Commission. Ms. Rabon was appointed by Governor Easley to fill the vacancy on the Utilities Commission created by the resignation of Commissioner Samuel James "Jimmy" Ervin, IV. This term expires June 30, 2015. Mr. Beatty was appointed by Governor Easley to fill the vacancy on the Utilities Commission created by the resignation of Commissioner James Y. Kerr, II. This term expires June 30, 2009.***

Confirmation by the General Assembly of Utilities Commission appointments made by the Governor is required by G.S. 62-10. The resolution is effective upon ratification.

For each appointment, a biographical narrative and a Statement of Economic Interest filed with the State Ethics Commission are before this Committee, together with the evaluation letter from the Ethics Commission. The Governor's letter of appointment is also before the Committee.

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

A Utilities Commissioner is presently paid a salary of $123,198.00 annually. There are fixed salary augmentations based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

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

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-10(i) provides, in part: *"Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office."*

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

The General Assembly created the Utilities Commission and establishes policies that the Commission carries out, usually with broad discretion. Chapter 62 of the General Statutes provides that the Commission is both a regulator of public utilities, as well as a judge in all matters relating to regulated public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

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

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

EFFECTIVE DATE: The resolution is effective upon ratification.

S90-SMRL-3(e1) v1

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

December 30, 2008

Ms. Janet Pruitt
Principal Clerk of the Senate
North Carolina General Assembly
2007 Legislative Building
Raleigh, NC 27601

Dear Ms. Pruitt:

Pursuant to North Carolina General Statute § 62-10(g), I hereby appoint Susan Rabon and Bryan Beatty to serve as members of the North Carolina Utilities Commission and submit their names for confirmation by the North Carolina General Assembly. Mrs. Rabon's term shall begin upon her taking the oath of office as required by General Statute § 62-11, and, upon confirmation, will expire June 30, 2015. Mr. Beatty's term shall begin upon his taking the oath of office as required by General Statute § 62-11, and, upon confirmation, will expire June 30, 2009.

Mrs. Rabon will fill the seat formally held by Samuel James "Jimmy" Ervin. Mr. Beatty will fill the seat formally held by James Kerr.

Enclosed is biographical information on these appointees. Please feel free to call on them or members of my staff if you need additional information.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE: as
cc: The Honorable Marc Basnight
The Honorable Joe Hackney
The Honorable Walter Dalton
Ms. Denise Weeks
The Honorable Beverly Perdue

DEC 31 2008

Biographical Information
Susan Warren Rabon

Susan Rabon was born in Onslow County, North Carolina on May 6, 1960, and grew up in Danville, Virginia, where she graduated from George Washington High School in 1978. In 1982, she graduated from North Carolina State University with a B. A., summa cum laude, in Political Science. She received her J.D from the University of Virginia School of Law in 1986.

Upon graduation from law school and having been admitted to the North Carolina State Bar in the summer of 1986, she clerked for The Honorable Jack L. Cozort, North Carolina Court of Appeals. She entered private practice in 1987 with the firm, Carr, Swails, Huffine & Crouch of Wilmington, NC. In 1993, she joined the staff of the Attorney General's Office in Raleigh as Special Counsel and in 1994 became Deputy Attorney General for Administration. There she oversaw the day-to-day operation of the Department of Justice as Chief of Staff.

In 2001, she moved to the Governor's Office with incoming Governor Michael F. Easley. As Senior Assistant for Administration she served as one of the Governor's top three advisors and oversaw the day-to-day administrative operations of the Governor's Office. She provided the Governor with advice in many areas of state government but particularly in the areas of budget, personnel and technology.

Commissioner Rabon was appointed by Governor Mike Easley and assumed the Commissionership on January 7, 2009. She is a member of the North Carolina State Bar and is a North Carolina Certified Mediator. She was appointed to the North Carolina State University Board of Visitors in 2004. She is an active volunteer in the schools and in other community affairs. She and her husband Tom have one son.

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

January 5, 2008

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: Evaluation of Statement of Economic Interest Filed By Ms. Susan W. Rabon

Dear Governor Easley:

I am in receipt of Susan W. Rabon's 2009 Statement of Economic Interest as a prospective appointee to the **North Carolina Utilities Commission ("Commission")**. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

Please contact our office if you have any questions concerning this evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

Perry Y. Newson
Executive Director

PYN: bc

cc: Ms. Susan W. Rabon
Chairman of the Commission

2009 No-Change Form
Statement of Economic Interest

RECEIVED
JAN 5 2009
STATE ETHICS COMMISSION

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
For assistance please call 919-807-4620 or e-mail: ethics.commission@doa.nc.gov.
An electronic version is available on the Commission's website at www.ethicscommission.nc.gov.
DUE NO LATER THAN APRIL 15, 2009

The State Government Ethics Act requires that covered persons file a Statement of Economic Interest ("SEI") annually and no later than April 15, 2009, for the current filing year. However, if there have been no changes to your responses to the questions on your most recently filed SEI, the completion of this no-change form will satisfy that annual filing requirement.

Name of Person Filing: Susan W. Rabon
Preferred Mailing Address: 5313 Lake Edge Drive
Holly Springs, NC 27540
Daytime Phone Number: (919) 733-2915
E-Mail Address: susan.rabon@nc.gov
State Board or Agency: Utilities Commission

North Carolina law establishes a fine of $250 for failure to timely comply with the annual SEI filing requirement. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information. Such actions can also subject you to disciplinary action in connection with your employment.

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by law, that I have reviewed my most recently filed Statement of Economic Interest and that as of December 31, 2008, my responses continue to be true, correct, and complete to the best of my knowledge and belief. I also certify that I have disclosed any additional information that *I believe* may assist the State Ethics Commission in advising me concerning my compliance with the State Government Ethics Act on the attached Additional Disclosure Addendum.

Susan W. Rabon
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by Susan W. Rabon
Name of Person Filing (please print)

Date: 1-5-09
(Official Seal)

Amy D. Blinson
Official Signature of Notary Public

Notary's printed or typed name: Amy D. Blinson

My Commission Expires: 11-17-2010

2009 Statement of Economic Interest

("Long Form")

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
Office location: Administration Building, 116 West Jones Street, Room G-068, Raleigh 27601
For assistance please call 919-807-4620 or e-mail: ethics.commission@doa.nc.gov.
An electronic version of this SEI and additional information about its completion are available on the Commission's website at www.ethicscommission.nc.gov.

CONTACT INFORMATION

Name of Person Filing Susan W. Rabon

Preferred Mailing Address[1] 5313 Lake Edge Drive
Holly Springs, NC 27540

Job Title/Employer Senior Assistant for Administration / Office of the Governor

Daytime Phone Number (919)733-2915

E-Mail Address susan.rabon@nc.gov

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards on which you are serving or to which you are being considered for appointment:

Utilities Commission

Please provide the following information concerning your spouse and other members of your immediate family.[2] **If the information requested does not apply, please indicate "none."**

Name (First, Last)[3]	Occupation	Employer	Business
Tom B. Rabon, Jr.	Executive VP	Redhat, Inc.	software
John R. Rabon	student		

[1] **With the exception of judicial officers** (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

[3] Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of 12/31/08 unless another time period is specified in the question.

- **Do not list the value of those assets or liabilities.**
- **Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.**

REAL ESTATE

1. List all North Carolina real estate in which you, your spouse, or other members of your immediate family have an ownership interest with a market value of $10,000 or more.

Owner of Real Estate	Location by County and City	% Ownership Interest
Tom B. Rabon, Jr. and Susan W. Rabon	Wake Co., Holly Springs, NC	100%
Tom B. Rabon, Jr. and Susan W. Rabon	Brunswick Co, Southport, NC	100%
Tom B. Rabon, Jr. and Susan W. Rabon	Brunswick Co., Southport, NC	100%
Tom B. Rabon, Jr. and Susan W. Rabon	Brunswick Co., Bald Head Island	100%
Tom B. Rabon, Jr.	Brunswick Co., Oak Island, NC	50%

. List all North Carolina real estate with a market value of $10,000 or more that is rented to or from ıe State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City
NONE		

PERSONAL PROPERTY

3. List personal property with a market value of $10,000 or more that was sold to or purchased from the State by you, your spouse, or other members of your immediate family *within the preceding two years*. Please identify the State agency involved in the purchase or sale of the property.

Identity of Purchaser	Identity of Seller	Nature and Location of Property
NONE		

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the stee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

4. List personal property with a market value of $10,000 or more that was leased or rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property
None		

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). List the name of each publicly owned company in which you, your spouse, or other members of your immediate family own interests valued at $10,000 or more.

► Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.

► Do not disclose the value of your interests.

Owner of Interest	Name of Company
Susan W. Rabon	CSCO
Tom B. Rabon, Jr.	RHT
Tom B. Rabon, Jr.	ALU
Tom B. Rabon, Jr. and Susan W. Rabon	North State Bancorp

5(b). List the name of each company in which you, your spouse, or other members of your immediate family hold stock options valued at $10,000 or more.

► Do not disclose the value of the stock option(s).

► Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held
Tom B. Rabon, Jr.	RHT

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). List financial interests valued at $10,000 or more that you, your spouse, or other members of your immediate family have in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations).

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company
Susan W. Rabon	Lansdale, LLC	partner *see attached affidavit
Tom B. Rabon, Jr.	Horticulture Asset Mgmt. Inc.	
Tom B. Rabon, Jr.	Southeast Interactive Affiliates Fund III, LP	

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
None known	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
None Known	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

VESTED TRUSTS

7. If you, your spouse, or other members of your immediate family are the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*, provide the following information.

▶ Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust
None		

LIABILITIES

8. List each liability of $10,000 or more incurred by you, your spouse, or other members of your immediate family, excluding indebtedness on your primary personal residence.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

II. OTHER DISCLOSURES

9. At anytime during 2008, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes? ✓Yes ___No
If so, provide the following information.

- **Do not list State boards or entities, or entities created by a political subdivision of the State.**
- **If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.**

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
Susan W. Raboon, Bd. Member	NCSU Bd. of Visitors	Advisory	State University
Tom B. Raboon, Jr., Bd. Member	MCNC	Technological Innovation	Works with State Agencies
Tom B. Raboon, Jr., Bd. Member	NC China Center	Business & Educational Interest	Works with State Agencies

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, our spouse, or other members of your immediate family during 2008 if that source was not previously ..sted in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income. Please do *not* include income received from the following sources:

- **Capital gains**
- **Federal government retirement**
- **Military retirement**
- **Social security income**

Recipient of Income	Name of Source	Business or Industry	Type of Income
Susan W. Raboon	State of NC.	Governor's Office	salary
Tom B. Raboon, Jr.	Redhat, Inc.	software.	salary
Tom B. Raboon, Jr.	Lucent Technologies	retired	pension

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

11. Are you are a practicing attorney? ___Yes ✓No
If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2008.

( ) Administrative	( ) Admiralty	( ) Corporate	( ) Criminal
( ) Decedents' Estates	( ) Environmental	( ) Insurance	( ) Labor
( ) Local Government	( ) Real Property	( ) Securities	( ) Tax
( ) Tort litigation (including negligence)		( ) Utilities regulation	

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ___Yes ✓No
If so, provide the following information for those services for which you charged or were paid over $10,000 during 2008.

Type of Business	Nature of Services Rendered
None	

13. As of December 31, 2008, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with your State board or employing entity? Yes ✓No
If so, provide the following information.

►You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
None		

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction? ✓Yes ___No
If so, provide the following information.

► You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

► Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
Tom B. Rabon, Jr.	NCTA	Board Member - Trade Assoc. for NC-I.T interests

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ___ Yes ✓No
If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction
None		

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ___ Yes ✓No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

► Do not report gifts given by members of your extended family.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value
None			

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ___Yes ✓No
If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

- ▶Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

- ▶You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such during 2008? ___ Yes ✓No
If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other information that may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? ___Yes ✓No

If so, please provide that information.

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

**** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.****

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

Susan W. Rabon
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by Susan W. Rabon
(Name of Person Filing)

Date: 12-30-08
(Official Seal)

Amy D. Blinson
Official Signature of Notary Public

Notary's printed or typed name: Amy D. Blinson

My Commission Expires: 11-17-2010

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Affidavit of Susan Warren Rabon

I have a legal interest in Landsdale LLC which is a Virginia Limited Liability Company in Danville, Virginia. The other owners are my father and my brother. The only asset of Landsdale LLC is one parcel of real estate on which is located a business owned by my brother and father and in which I do not have any ownership interest. I have never taken any active involvement or interest in the business activities of Landsdale LLC.

In anticipation of my appointment to the North Carolina Utilities Commission, and during my tenure as a member of the North Carolina Utilities Commission, I shall not engage in any of the business activities or operations of Landsdale LLC.

Susan Warren Rabon

Susan Warren Rabon

North Carolina

Wake County

Subscribed and sworn to before me, a Notary Public of Johnston County, North Carolina, that Susan Warren Rabon appeared before me, that I am confident of her true identity as the Affiant of this document, and that I was present at the time of the signing and notarization on this 30 day of December, 2008.

My commission expires 11-17-2010.

Amy D. Simms

Notary Public

Commissioner Bryan E. Beatty

Commissioner Beatty was appointed to the North Carolina Utilities Commission by Governor Mike Easley for a term that commenced on January 7, 2009 and expires on June 30, 2009.

Born March 10, 1958 in Englewood, New Jersey and a graduate of Salisbury High School in Salisbury, North Carolina, he earned his B.A. in Political Science from the State University of New York at Stony Brook in 1980. Beatty received his Juris Doctorate in 1987 from the University of North Carolina School of Law and is a 1981 graduate of the N.C. State Bureau of Investigation Academy at Salemburg.

Beatty served as the Secretary of the N.C. Department of Crime Control and Public Safety from 2001 until 2009 and was in charge of the state's homeland security coordination. He also served as director of the State Bureau of Investigation from October 1999 to January 2001.

During his tenure at the Department of Justice, he also served as an SBI agent, an associate attorney general representing the UNC Hospital System, an assistant attorney general in the Motor Vehicles section, the state's first inspector general, and deputy attorney general for policy and planning.

Beatty is the immediate past chair of the State Emergency Response Commission and served on the N.C. Lottery Commission. He has also served as a member of the Governor's Crime Commission, on the Board of Directors of the Criminal Justice Information Network, and as chair of the Governor's Terrorism Preparedness Task Force.

Beatty received the National Governors' Association Award for Distinguished Service to State Government in August 2003 for his leadership in North Carolina's terrorism preparedness efforts. In November 2002, he was honored by the University of North Carolina at Chapel Hill with the Harvey E. Beech Outstanding Alumni Award, established to recognize black alumni who are "stellar leaders within the University community or in his or her local community." In 2005, Beatty received the Charles Dick Medal of Merit Award from the National Guard Association of the United States. Also, in 2005 he received the Distinguished Civilian Service Award from the State of North Carolina.

In 2008, Governor Mike Easley awarded Beatty the Order of the Long Leaf Pine, the highest service award that can be given to a North Carolina citizen.

Beatty and his wife Rhonda have three children, Bryan Jr., Nicole and Michael.

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

January 5, 2008

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: Evaluation of Statement of Economic Interest Filed By Secretary Bryan E. Beatty

Dear Governor Easley:

I am in receipt of Secretary Bryan E. Beatty's 2009 Statement of Economic Interest as a prospective appointee to the **North Carolina Utilities Commission ("Commission").** I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

Secretary Beatty noted that he previously owned securities in various energy companies, including Duke Energy, Progress Energy, Spectra Energy and SCANA, all of which are regulated by the Commission. He disclosed that all shares of these securities were sold in 2007-2008.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

Please contact our office if you have any questions concerning this evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

Perry Y. Newson
Executive Director

PYN: bc

cc: Secretary Bryan E. Beatty
Chairman of the Commission

2009 Statement of Economic Interest

("Long Form")

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
Office location: Administration Building, 116 West Jones Street, Room G-068, Raleigh 27601
For assistance please call 919-807-4620 or e-mail: ethics.commission@doa.nc.gov.
An electronic version of this SEI and additional information about its completion are available on the Commission's website at www.ethicscommission.nc.gov.

RECEIVED
DEC 3 1 2009
STATE ETHICS COMMISSION

CONTACT INFORMATION

Name of Person Filing Bryan E. Beatty

Preferred Mailing Address[1] 4701 Mail Service Center
Raleigh, NC 27699-4701

Job Title/Employer Secretary, NC Department of Crime Control & Public Safety

Daytime Phone Number 919-733-2126

E-Mail Address bbeatty@nccrimecontrol.org

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards on which you are serving or to which you are being considered for appointment:

North Carolina Utilities Commission

Please provide the following information concerning your spouse and other members of your immediate family.[2] If the information requested does not apply, please indicate "none."

Name (First, Last)[3]	Occupation	Employer	Business
Rhonda H. Beatty	None	N/A	N/A
Bryan E. Beatty, Jr.	None	N/A	N/A
Nicole A. Beatty	None	N/A	N/A
Michael E. Beatty	None	N/A	N/A

[1] **With the exception of judicial officers** (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information a of 12/31/08 unless another time period is specified in the question.

- **▶Do not list the value of those assets or liabilities.**
- **▶Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.**

REAL ESTATE

1. List all North Carolina real estate in which you, your spouse, or other members of your immediate family have an ownership interest with a market value of $10,000 or more.

Owner of Real Estate	Location by County and City	% Ownership Interest
Bryan & Rhonda Beatty	Wake County	100%

2. List all North Carolina real estate with a market value of $10,000 or more that is rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City
None		

PERSONAL PROPERTY

3. List personal property with a market value of $10,000 or more that was sold to or purchased from the State by you, your spouse, or other members of your immediate family *within the preceding two years*. Please identify the State agency involved in the purchase or sale of the property.

Identity of Purchaser	Identity of Seller	Nature and Location of Property
None		

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

4. List personal property with a market value of $10,000 or more that was leased or rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property
None		

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). List the name of each publicly owned company in which you, your spouse, or other members of your immediate family own interests valued at $10,000 or more.

- ▶Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.
- ▶Do not disclose the value of your interests.

Owner of Interest	Name of Company
None	

5(b). List the name of each company in which you, your spouse, or other members of your immediate family hold stock options valued at $10,000 or more.

- ▶Do not disclose the value of the stock option(s).
- ▶Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). List financial interests valued at $10,000 or more that you, your spouse, or other members of your immediate family have in a non-publicly owned company or business entity (including interests i partnerships, limited partnerships, joint ventures, limited liability companies, limited liabilit partnerships, and closely held corporations).

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company
None		

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
None	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

VESTED TRUSTS

7. If you, your spouse, or other members of your immediate family are the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*, provide the following information.

►Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust
None		

LIABILITIES

8. List each liability of $10,000 or more incurred by you, your spouse, or other members of your immediate family, excluding indebtedness on your primary personal residence.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

II. OTHER DISCLOSURES

9. At anytime during 2008, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable scientific, literary, public health and safety, or educational purposes? ___Yes _X_No
If so, provide the following information.

► Do not list State boards or entities, or entities created by a political subdivision of the State.

► If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
None			

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2008 if that source was not previously listed in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income. Please do *not* include income received from the following sources:

► Capital gains
► Federal government retirement
► Military retirement
► Social security income

Recipient of Income	Name of Source	Business or Industry	Type of Income
Bryan E. Beatty, Sr.	State of NC	Public Safety	Salary

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

11. Are you are a practicing attorney? ___Yes X No
If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2008.

( ) Administrative ( ) Admiralty ( ) Corporate ( ) Criminal
( ) Decedents' Estates ( ) Environmental ( ) Insurance ( ) Labor
( ) Local Government ( ) Real Property ( ) Securities ( ) Tax
( ) Tort litigation (including negligence) ( ) Utilities regulation

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ___Yes X No
If so, provide the following information for those services for which you charged or were paid over $10,000 during 2008.

Type of Business	Nature of Services Rendered
None	

13. As of December 31, 2008, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with your State board or employing entity? Yes X No
If so, provide the following information.

►You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
None		

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction? ___Yes _X_No
If so, provide the following information.

▶You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

▶Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
None		

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ___ Yes _X_ No
If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ___ Yes _X_ No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

▶Do not report gifts given by members of your extended family.

▶Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value
None			

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ___Yes _X_No
If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

►Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

►You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
None			

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such during 2008? ___ Yes _X_ No
If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other information that may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? _X_ Yes ___No

If so, please provide that information.

I owned stock in Progress Energy, Duke Energy, SCANA Corp. and Spectra Energy. I sold all shares of the stock in 2007-08.

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

**** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.****

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

B. E. Beatty

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by Bryan E. Beatty
(Name of Person Filing)

Date: Dec 31, 2008

Lisa W. Evans

Official Signature of Notary Public

(Official Seal)

LISA W. EVANS NOTARY PUBLIC JOHNSTON COUNTY, NC

Notary's printed or typed name: Lisa W. Evans

My Commission Expires: 5-12-0[illegible]22

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 3, 2009	11:00 AM	1027 LB

The following will be considered:

Joseph A. Smith, Jr., Commissioner of Banks will speak

AND

BILL NO.	SHORT TITLE	SPONSOR
SB 37	Motorsports Vehicle Combination Lengths.	Senator Tillman
SB 114	Exempt Some Church Facility LU/LA Elevators.	Senator Hoyle

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Tuesday, March 3, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 3, 2009, in Room 1027 of the Legislative Building. Twenty-three members of the committee were present. Senator Soles presided. Patricia Barnard of Garner, Hannah Gardner or Raleigh, Gabrina Johnson of Cary, and Joseph Clay of Rutherford served as pages.

S.B. 37 – Motorsports Vehicle Combination Lengths.

Senator Tillman was recognized to explain the bill which would allow motor vehicle combinations used in connection with motorsports competition events that are up to 90 feet in length to operate on highways in the State. Senator Stevens offered an amendment to change the effective date. He moved for the amendment's adoption and the motion carried. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill, the summary and the amendment is attached.

The State of North Carolina Banks: A Review, Analysis, and Proposal

Senator Soles recognized Joseph A. Smith, Jr., North Carolina Commissioner of Banks. Commissioner Smith recognized his associates: Ray Grace, Deputy Commissioner; Mark Pearce, Chief Deputy Commissioner; Will Corbett, Commission Attorney; McNeil Chestnut, Special Deputy Attorney General; and Elizabeth Hammond, Director of Finance and Information Technology. Commissioner Smith then outlined the world banking crisis and its affect on North Carolina banks. Then he discussed North Carolina banks' health, and the future needs of the banks. A copy of his power point presentation is attached.

The meeting adjourned at 11:52 AM.

Senator R.C. Soles, Jr., Chair
Senate Commerce Committee

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, March 3, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

The State of North Carolina Banks: A Review, Analysis, and Proposal
Joseph A. Smith, Jr., North Carolina Commissioner of Banks

Bills

S37	Motorsports Vehicle Combination Lengths.	Sen. Tillman
S114	Exempt Some Church Facility LU/LA Elevators.	Sen. Hoyle

Adjournment

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Pearce	NCCOB
Will Corbett	NCCOB
Paul Stock	NCBA
Nathan Batts	NCBA
Alex MacFadyen	First Citizens Bank
John McMillan	NFOS
Karen Ray	

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Jurson	
Jessica Hayes	NC Home Builders Assn
Rick Zechini	NC Assoc. of Realtors
R. Paul Wilms	WGR
Katherine Davis	ElectriCities
Daniel Baum	K & L Gates
David Boaz	MWC
Mary Kimbrell	Poyner Spruill

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Phillips	TWC
Chris Hollis	K&L Gates
Joe Williams	Atty — GSO. N.C
Michelle Frazier	MFS
Jimmy Fuller	Hunton & Wms.

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Power Sports
Bill Scoggin	Kal Gases

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date.**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DANEEN WEEKS	SEN. GRAHAM INTERN
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
BETTY TURNER	Bank of America
Dirk Carlton	Farmer
Jonathan Brooks	NC Dept of Labor
John Hoomani	NCDOL
Johanna Reese	DOT
JOHN SHAW	SELF

VISITOR REGISTRATION SHEET

Commerce — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Sanders	WCSP
Allison Waller	Charlotte Chamber
[signature]	RMC
Amy McConkey	Smith Anderson
Oliver Carter	Sen. Vaughan
Rose Williams	NC DOI
Michael Houser	NC DOR
Lisa Piercy	Ragsdale Liggett
Roz Sawyer	NCCCS
Zeb Alley	NMRS
Julia Leggett	The Arc of NC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

CORRECTED REPORT

Tuesday, March 03, 2009

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

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

S.B. **37** Motorsports Vehicle Combination Lengths.

Draft Number:	85083
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 37

Short Title:	Motorsports Vehicle Combination Lengths.	(Public)
Sponsors:	Senators Tillman; Allran, Berger of Rockingham, Blake, Brock, Brown, Brunstetter, Davis, Foriest, Goodall, Goss, Hoyle, Jenkins, Jones, Preston, Rand, Rucho, Stevens, and Vaughan.	
Referred to:	Commerce.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE OPERATION OF CERTAIN MOTORSPORTS VEHICLE COMBINATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 is amended by adding a new subsection to read:

"(n) Vehicle combinations used in connection with motorsports competition events that include a cab or other motorized vehicle unit with living quarters, and an attached enclosed specialty trailer, the combination of which does not exceed 90 feet in length, may be operated on the highways of this State, provided that such operation takes place for one or more of the following purposes:

(1) Driving to or from a motorsports competition event.

(2) For trips conducted for the purpose of purchasing fuel or conducting repairs or other maintenance on the competition vehicle.

(3) For other activities related to motorsports purposes, including, but not limited to, performance testing of the competition vehicle.

The Department of Transportation may prohibit combinations authorized by this subsection from specific routes, pursuant to G.S. 20-115.1(b)."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 37:
Motorsports Vehicle Combination Lengths

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 3, 2009
Introduced by:	Sen. Tillman	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 37 would allow motor vehicle combinations used in connection with motorsports competition events that are up to 90 feet in length to operate on highways in the State.***

CURRENT LAW: G.S. 20-116 generally prohibits any combination of vehicles that exceeds a total length of 60 feet. In addition, G.S. 20-115.1(b) authorizes the Department of Transportation to prohibit motor vehicle combinations on portions of any route on the State highway system if the vehicle combination cannot be safely accommodated on that route.

Oversize permits are not currently available for the vehicle combinations described in Senate Bill 37 because they are transporting divisible loads. Therefore, these combinations cannot legally be operated on North Carolina highways.

BILL ANALYSIS: Senate Bill 37 would allow certain motor vehicle combinations connected with motorsports competition to operate on State highways. The combinations would include a cab or other motorized vehicle unit with living quarters, and an attached specialty trailer, and could be up to 90 feet in length. The combinations would be authorized for the following purposes only:

- Driving to or from a motorsports competition event.
- To purchase fuel or conduct repairs or maintenance on the competition vehicle.
- For other activities related to motorsports.

The bill would make clear that the Department is authorized to prohibit these combinations on specific routes pursuant to G.S. 115.1(b).

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

S37-SMSU-5(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 37

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

S37-ASU-1 [v.1]

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

Date _____,2009

Senator _____

moves to amend the bill on page 1, line 18, by rewriting the line to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 114

Short Title:	Exempt Some Church Facility LU/LA Elevators.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

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.

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 place used primarily for religious rituals or religious observance within

any building or facility owned and operated by a religious organization. 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. This act is effective when it becomes law.

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

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 1, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***As the title of the bill indicates, Senate Bill 114 adds a new subsection (c1) to G.S. 143-138, North Carolina State Building 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 defines a place of worship as a "place used primarily for religious rituals or religious observance within any building or facility owned and operated by a religious organization."

BILL ANALYSIS: As noted above, Sections 2.(a) and (b) of the bill exempt from the North Carolina State Building Code the installation and maintenance of limited use or limited access hydraulic elevators in a place of worship. 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 (DOL) are not affected by this bill.

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.

Section 2.(c) provides that a local government may not adopt any ordinance in conflict with or limiting the exemption as created by the bill.

Section 3 clarifies that the bill does not limit the authority of DOL to perform safety inspections of hydraulic elevators.

The Codes and Engineering Section, Office of the State Fire Marshall, Department of Insurance does not oppose S114.

EFFECTIVE DATE: Senate Bill 114 is effective when it becomes law.

S114-SMRG-3(e1) v2

Principal Clerk ____
Reading Clerk ____

Corrected: SB 47 – Unauthorized Wireless Phone Use/$50 Limit has been withdrawn from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 10, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 18	Amend Cemetery Act.	Senator Goss
SB 114	Exempt Some Church Facility LU/LA Elevators.	Senator Hoyle

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Tuesday, March 10, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 10, 2009, in Room 1027 of the Legislative Building. Twenty-five members of the committee were present. Senator R.C. Soles presided. Donald Allen of Wake County, Kevin Adams of Harnett County and Vinnie Soraos of Cumberland County served as pages.

S.B. 114 – Exempt Some Church Facility LU/LA Elevators.

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS exempts 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. Senator Vaughan was recognized to offer an amendment which would require elevators to prominently display identifying numbers to aid in the extrication of passengers from malfunctioning elevators. Senator Vaughan moved for the amendments adoption and the motion carried. Senator Apodaca moved to adopt the proposed committee substitute as amended and the motion carried. A copy of the bill, the PCS, the amendment, and the summary is attached.

S.B. 18 – Amend Cemetery Act.

Senator Goss was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. Senator Goss also requested that the bill be taken up for discussion without a vote. Wendy Graf Ray, a staff attorney with the Research Division, was recognized to explain the PCS, which amends the North Carolina Cemetery Act by modifying the membership of the Cemetery Commission, changing the investments options for perpetual care trust funds, and eliminating the ability to post bonds in lieu of deposits to trust accounts. Bob Case, Lakeview Memorial Park Cemetery manager, was recognized to speak in opposition of the bonding changes, but was in favor of the additional changes. Michael Rulison of the Funeral Consumers Alliance was recognized to speak in favor of the bill and requested additional regulations on cemetery owners. Mr. Rulison's comments are attached. Lucius Pullen, NC Cemetery Association was recognized to state that the Association has voted to oppose the bill. Rob Ysidron, President of the NC Cemetery Association, was recognized to speak in opposition to the bill. Rob Duke, Surety and Fidelity Association, was recognized to speak in opposition to the bonding changes. Ralph Yates, a citizen, was recognized to speak in favor of the bill. Jimmy Miller, Cemetery Commission Administrator, was recognized to explain bonding and the Cemetery Commissions Trust Account. A copy of the bill, the PCS, and the summary is attached.

The meeting adjourned at 11:57 AM.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, March 10, 2009

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

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

S.B. **114** Exempt Some Church Facility LU/LA Elevators.

Draft Number:	15094
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, March 10, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 18	Amend Cemetery Act.	Sen. Goss
SB 114	Exempt Some Church Facility LU/LA Elevators.	Sen. Hoyle

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Fullen	NCCA Counsel
Rusty Tysor	NCCA
John McMillan	MFS
Robert Duke	Surety & Fidelity Association
Ralph Ayala	Citizen
Emmanuel Ayala	Citi
John Hoomani	NCDOL
Art Smith	NCDOL
Jeanicy Haigwood	NCDOL
Connie Hanby	Electricities of NC
[illegible]	BCBS NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	GSK
[signature]	Clinton
[signature]	Clinton
[signature]	NCHM

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Duke	The Surety & Fidelity Association
Jordan	NC Funeral Directors Assoc
Jimmy Miller	NC Cemetery Commission Admin.
Bob Case	NC Cemetery Assoc.
Mary Puryear	" " "
Jody Rentz	NC Citizen 118 Tiercel Ct. Cary NC 27518
M. Rubison	Funeral Consumer Alliance to through taff@bellsouth.net
Carmen Hanley	Electricities of NC
Cady Thomas	NC Assn of REALTORS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	RARE - Allen
R. Paul Williams	WGR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 10, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Poyner Spruill
James Baron	SCI Funeral Services of NC
Caressa Hughes	SCI - Houston
Robert Yoidron, JR	SCI ; President of North Carolina Cemetery Assoc
Jim Blackburn	Association of County Commissioners
Allison Waller	Charlotte Chamber
David Barnes	Poyner Spruill
Julia Leggett	The Arc of NC
[signature]	CAPA
Bill Rivers	AZP

SENATE BILL 114

Short Title:	Exempt Some Church Facility LU/LA Elevators.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

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.

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 place used primarily for religious rituals or religious observance within

any building or facility owned and operated by a religious organization. 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. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 114
PROPOSED COMMITTEE SUBSTITUTE S114-CSRG-4 [v.2]

3/9/2009 6:06:03 PM

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.

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.

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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.

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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. This act is effective when it becomes law.

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

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 1, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Tim Hovis
Analysis of:	Proposed Comm. Sub. S114-CSRG-4		Committee Counsel

SUMMARY: ***As the title of the bill indicates, the Proposed Committee Substitute for Senate Bill 114 adds a new subsection (c1) to G.S. 143-138, North Carolina State Building 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 PCS defines a place of worship as a "building or facility owned and operated by a religious organization and used primarily for religious rituals or religious observance."

BILL ANALYSIS: As noted above, Sections 2.(a) and (b) of the bill exempt from the North Carolina State Building Code the installation and maintenance of limited use or limited access hydraulic elevators in a place of worship. 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 (DOL) are not affected by this bill.

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.

Section 2.(c) provides that a local government may not adopt any ordinance in conflict with or limiting the exemption as created by the bill.

Section 3 clarifies that the bill does not limit the authority of DOL to perform safety inspections of hydraulic elevators.

The Codes and Engineering Section, Office of the State Fire Marshall, Department of Insurance does not oppose S114.

EFFECTIVE DATE: Senate Bill 114 is effective when it becomes law.

S114-SMRG-3(e1) v6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 114

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

S114-ARG-1 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
S114-CSRG-4

Date March 10 ,2009

Senator Vaughan

moves to amend the bill on page 1, line 5, by rewriting the line to read:
"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." ;

and on page 4, line 40, by rewriting the line to read:
"**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."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 18

Short Title:	Amend Cemetery Act.	(Public)
Sponsors:	Senators Goss; Jacumin, Snow, Stevens, and Swindell.	
Referred to:	Commerce.	

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY MODIFYING THE MEMBERSHIP OF THE CEMETERY COMMISSION, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, AND ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-50(a) reads as rewritten:

"(a) Membership. – The Cemetery Commission shall consist of nine members. The General Assembly shall appoint two members, one of whom shall be recommended by the President Pro Tempore of the Senate and one of whom shall be recommended by the Speaker of the House of Representatives. The General Assembly's appointments shall have no financial interest in or be involved in the management of a cemetery. The Governor shall appoint seven members as follows:

(1) Two members who own or manage cemeteries in North Carolina.

(2) ~~Three~~ Two members who are selected from six nominees submitted by the North Carolina Cemetery Association.

(3) ~~Two~~ Three public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business."

SECTION 2. G.S. 65-60.1 reads as rewritten:

"**§ 65-60.1. Trustees; qualifications; examination of records; enforcement.**

(a) The term "corporate trustee" as used in this Article shall mean either a bank or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks or any other corporate entity; provided that any corporate entity other than a bank or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a bank or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

(1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.

(2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

(3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars ($500,000) in the aggregate.

(4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be available at all reasonable times for examination by a representative of the Commission. The records shall be audited annually, within 90 days from the end of the trust fund's fiscal year, by an independent certified public accountant, and a copy of the audit report shall be promptly forwarded to the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a bank or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71.

(f) This section does not apply to a trustee of a perpetual trust fund described in G.S. 65-64."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. All deposits shall be made in a bank located within and authorized to do business in the State. The care and maintenance trust fund shall be invested and reinvested by the trustee in certificates of deposit and money market funds. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates or both with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~ subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) ~~In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services.~~ Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection."

SECTION 5. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed one year, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before

completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

~~(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission.~~"

SECTION 6. This act becomes effective July 1, 2010, and applies to appointments and investments made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-CSLG-4 [v.4]

3/5/2009 1:01:44 PM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, AND REQUIRING CEMETERY COMPANIES TO ALLOW THE INTERMENT OF THE PURCHASER OF A PRENEED CONTRACT WHO DIES BEFORE MAKING THE FINAL PAYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-60.1 reads as rewritten:

"**§ 65-60.1. Trustees; qualifications; examination of records; enforcement.**

(a) The term "corporate trustee" as used in this Article shall mean either a bank or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks or any other corporate entity; provided that any corporate entity other than a bank or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a bank or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

(1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.

(2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

(3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars ($500,000) in the aggregate.

(4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be available at all reasonable times for examination by a representative of the Commission. The records shall be audited annually,

within 90 days from the end of the trust fund's fiscal year, by an independent certified public accountant, and a copy of the audit report shall be promptly forwarded to the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a bank or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71.

(f) This section does not apply to a trustee of a perpetual trust fund described in G.S. 65-64."

SECTION 2. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. All deposits shall be made in a bank located within and authorized to do business in the State. The care and maintenance trust fund shall be invested and reinvested by the trustee in certificates of deposit and money market funds. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits

thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 3. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates or both with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the

Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(f1) In the event the purchaser dies before final payment is collected, the seller shall allow the purchaser to be interred and shall collect any unpaid balance from the purchaser's estate.

(g) ~~In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance~~

~~bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services.~~ Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection."

SECTION 4. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed one year, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month

following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

~~(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission.~~"

SECTION 5. This act becomes effective October 1, 2009.

SENATE BILL 18:
Amend Cemetery Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 10, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S18-CSLG-4		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Require deposits to perpetual care funds to be made in banks located in North Carolina and that the funds be invested in certificates of deposit and money market funds.***
- ***Eliminate the option of posting a bond in lieu of making deposits to a trust account.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Require cemetery companies to allow a purchaser to be interred if he or she dies before final payment is collected.***

The PCS also makes several grammatical and technical changes, including updating references to statutes that have been recodified.

BILL ANALYSIS:

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. The PCS would amend the law to require that the funds be invested and reinvested only in certificates of deposit and money market funds. It would also require that all deposits to the funds be made in banks located within and authorized to do business in North Carolina.

Posting bond in lieu of making deposits to trust accounts. Cemetery companies are required to establish trust accounts for proceeds from preneed contracts for property or services and proceeds from the sale of mausoleums and belowground crypts prior to construction. However, current law allows companies to post an acceptable performance bond in lieu of making deposits to the trust account. The PCS would eliminate the option of posting a bond in lieu of making deposits to those accounts.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. The PCS would specify that the contract must include the cost for opening and closing each grave space.

Burial when purchaser of preneed contract dies prior to final payment. Current law does not address situations where a purchaser of a preneed contract dies prior to making final payment on the contract. Therefore, the cemetery company may delay the burial until the debt is paid in full. The PCS would require the cemetery company to proceed with the burial and collect any unpaid balance from the purchaser's estate.

EFFECTIVE DATE: The act would become effective October 1, 2009.

S18-SMSU-7(CSLG-4) v1

S.18 Amend Cemetery Act.

Statement on behalf of NC consumers by Funeral Consumers Alliance of the Triangle
on the purpose and content of S.18 v 1, Amend Cemetery Act, by Michael Rulison, advocacy liaison

Committee Chair, Members and other attenders,

Thank you for the chance today to represent the Funeral Consumers Alliance of the Triangle (FCAT) and its members.

To begin, let me note that cemetery costs are a significant consumer expenditure along with funerals automobiles; important amounts are at stake and that, as Gov. Perdue mentioned, we have a citizen legislature that can be extraordinary leaders. We need that.

I come to say that this bill, in its published form, v.1, is highly desirable, although not as complete as we believe it should be.

First, **SECTION 1.** G.S. 65-50(a) changes the membership of the commission to provide for a five person majority of public members "not involved in management of, any cemetery or funeral related business." This is a highly desirable change and should be retained.

As our country's economic reverses attest, change is not optional; how we adapt to it is negotiable. We view the current statutes regarding the Cemetery Commission as a good start for protecting consumers at adoption in 1975; today we see them as needing enhancement of the sort that this membership section would provide. My allusion to economic reverses carries also the thought that just as foxes with inherent conflicts of interest are not reliable guardians of chicken coops, so too, self-regulation by an industry often proves to have a large hat but few cattle.

Second, **SECTION 4.** G.S. 65-66 (dealing with bonds and trusts) reads as rewritten:

"§ 65-66. Receipts from sale of personal property or services; trust account; penalties...."

For us, the most pertinent part of this section would eliminate the use of bonds in lieu of putting in trust customer payments received by cemeteries. FCAT supports this change because, as the AIG fiasco shows, even huge insurers may not be reliable and little ones will not get much government backing. With trusts, the standards for investing are, we believe, higher. Among other states, 44 do not allow bonding; perhaps there is a good reason for that.

Third, the unnamed section to be added: consumer protection. It is clear, just from the most recent Cemetery Commission meeting, that the Commission, in spite of requiring lots of reports from only the perpetual care cemeteries it regulates, has very few tools with which to sanction cemetery operators who create financial difficulties and lots of personal stress for the customers by business practices that are at the least unfriendly and at worst worthy of litigation. In other words, when all is said and done, the Commission lacks the teeth to protect consumers in many situations.

We find that **§ 65-53. Powers** [of the Commission] apart from referring to fraud and dishonesty in a catchall provision [h], focuses more on fines, reports and misrepresentations saying little about the redressing the grievances of cemetery customers.

Accordingly, FCAT proposes an additional section at the start of the cemetery statutes to the effect that:

Instead of:

"§ 65-49. The North Carolina Cemetery Commission.

There is hereby established in the Department of Commerce a North Carolina Cemetery Commission with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article."

Wording more like this:

"A North Carolina Cemetery Commission is hereby established in the Department of Commerce with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article. Moreover, cemeteries regulated by this Article operate with a public purpose and and should act with regard for the public health, safety and welfare. This includes, but is not limited to, their financial solvency and future obligations to provide goods and services and protect the public health, but also in their obligation to operate with business practices that meet a "reasonable person" test for ethics and consumer protection so that the cemetery industry may merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

Fourth, FCAT advocates adding language to this bill that will make clear that the FTC Funeral Rule provisions already requiring funeral homes to offer all prospective customers their current, dated, written price list of goods and services are to be applied to North Carolina cemetery operators as well. It is clear that lack of such requirements allows cemeteries to look at your clothes and your car or analyze your voice and then set their prices to what they think you can pay. Consumers are fed up with practices like these. With incomes tanking we are searching for better options. We call upon the General Assembly to help consumers on this and the other issues enumerated above.

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Michael Rulison | Volunteer | 919/782-9576, Funeral Consumers Alliance of the Triangle,
3256 Lewis Farm Road Raleigh NC 27607-6723, www.fcat-nc.org tacf@bellsouth.net

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www.dignitymemorial.com

Senate Bill 18

Do Not Eliminate Surety Bonds

- **SB 18 will be devastating to our company and many other cemeteries in this state.**
- **Surety bonds are common funding vehicles in many states and have proven to be safe as well as beneficial to the consumer and businesses.**
- **Additional protections should be considered that will not eliminate bonding as an option.**
- **We suggest that the law regulate the transfer of bonds upon any change of ownership.**
- **We welcome the opportunity to work with the Committee and the Cemetery Commission to amend this legislation to allow for surety bonds with more restrictions to protect the consumer.**

Cemetery Locations/Information

Forsyth Memorial Park
Sharon Memorial Park
Gaston Memorial Park
Cumberland Memorial Gardens
Guilford Memorial Park
Raleigh Memorial Park
Greenlawn Memorial Park
Olreander Memorial Gardens
Hillcrest Gardens
Forest Lawn West Cemetery
Lakeland Memorial Park
Westminster Gardens Cemetery

Employees: 123 **Salaries Paid**: 5 million annually **Families Served**: 6,000 annually

SENATE COMMERCE COMMITTEE
Tuesday, March 17, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 17, 2009, in Room 1027 of the Legislative Building. Twenty-three members of the committee were present. Senator R.C. Soles, presided. Keifer Wynn of Raleigh, Tyler Smith of Asheville, Annie McAlister of Charlotte, and Devin Gerney of Raleigh served as pages.

Welcome and Introduction of Speakers

Senator Soles introduced Frank Holding, Jr., Chair of First Citizens Bank. Mr. Holding outlined the state of North Carolina banks. He said that the vast majority are well managed and will contribute to the State's economic recovery. He feels that Washington is bailing out unsuccessful banks, but penalizing well run banks by assessing a one time sliding fee to bolster the FDIC. First Citizens Bank is conservative but that does not prevent it from coming up with creative banking practices.

Senator Hoyle was recognized to introduce Kim Price who is the President and Chief of Citizens South Bank, and Chair of the Board of the NC Bankers' Association. Mr. Price spoke about how community banks are doing and how they may help North Carolina. He said that North Carolina has a balanced banking industry that has recognized national success. But he felt that some changes were needed such as the federal Government Accounting Standards Board needing more direction, and larger, successful banks needed to be allowed to consolidate with smaller, weaker banks. He wants the "up-tick rule" restored and any future stimulus bill should include a large tax credit for all homeowners, not just first time buyers. Finally, he wants the State to redouble its economic development efforts so jobs will increase.

The meeting adjourned at noon.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, March 17, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Introduction of Speakers

- Frank Holding, Jr. – Chair of First Citizens Bank
- Kim Price – President, Citizens South Bank

Bills

~~SB 135~~ ~~Operation of Mopeds.~~ ~~Senator Rand~~

Adjournment

Principal Clerk ____
Reading Clerk ____

REVISED NOTICE: SB 428 – Stay on Homeowners Insurance Actions has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 17, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 135	Operation of Mopeds.	Senator Rand

Welcome and Introduction of Frank Holding, Jr., Chair of First Citizens Bank and Kim Price, President of Citizens South Bank

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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BILL NO.	SHORT TITLE	SPONSOR
SB 135	Operation of Mopeds.	Senator Rand
SB 428	Stay on Homeowners Insurance Actions.	Senator Boseman

Introduction of Frank Holding, Jr., Chair of First Citizens Bank and Kim Price, President of Citizens South Bank

Senator R. C. Soles, Jr., Chair

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 17, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	BANC -
Paul Hagleman	Horack Talley Carter
Rep. J. Rhyne	House
Nathan Batts	NCBA
McNeil Chestnut	For the Comm of Bks.
Joseph A. Smith, Jr	Commissioner of Banks
Chris Kukla	Ctr for Responsible Lending
Sarah Smith	NCCSP
Joshua Bevacqua Comm	Capstrat
Butch Gunnells	NC Bev A
M McLennan	NCRC

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 17, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Marc Nichols	NCSHP / CCPS
David Ray	MWC
Mallory Hatcher	MWC
Heather Barrett	Hunton + Williams
Dan Schlinc	NCCUL
John McAlister	NC Chamber
Michael K. Thompson	Dominion
Preston Howard	MCIC
Dana Simpson	Smith Anderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 17, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hoffis	K&L Gates
Chris Valaur	Valaur Group LLC

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 17, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pulley	NCAOJ

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 24, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 69	CCPS Wrecker Service Fee Rules.	Senator Bingham Karen
SB 135	Operation of Mopeds.	Senator Rand Wendy
SB 405	Real Property Sales Information.	Senator Hartsell Kory
SB 423	Waive CDL Test Requirement for Military Pers.	Senator Brown Wendy

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Tuesday, March 31, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on March 31, 2009, in Room 1027 of the Legislative Building. Twenty-five members of the committee were present. Senator R.C. Soles presided. Abby Paulson of Cary, Max Godfrey of Gardner, Meredith Sutton of Pink Hill and Alexandra Holding of Charlotte served as pages.

SB 448 – Self-Service Storage Facilities.

Senator Hoyle was recognized to explain the bill. He moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the laws regulating self-service storage facilities. Karen Cochrane-Brown, a staff attorney with the Research Division, was recognized to answer questions. Senator Hoyle requested that the PCS be removed from the agenda in order to completely answer all of the questions.

SB 135 – Operation of Mopeds.

Senator Rand was recognized to explain the bill. He moved to adopt the PCS for discussion and the motion carried. The PCS requires mopeds to be registered with the Division of Motor Vehicles and to have in full force and effect a policy of financial responsibility. Susan Valauri, a Nationwide Insurance lobbyist, was requested to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

SB 405 – Real Property Sales Information.

Senator Hartsell was recognized to explain the bill. Senator Purcell moved to adopt the PCS for discussion and the motion carried. The PCS assists 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. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 11:46 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 01, 2009

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

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

S.B. **135** Operation of Mopeds.

Draft Number:	55325
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **405** Real Property Sales Information.

Draft Number:	55324
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 31, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 135	Operation of Mopeds.	Senator Rand
SB 375	Insurance/Cover Hearing Aids.	Senator Purcell
SB 405	Real Property Sales Information.	Senator Hartsell
SB 423	Waive CDL Test Requirement for Military Pers.	Senator Brown
SB 448	Self-Service Storage Facilities.	Senator Hoyle
SB 652	Prohibit Sale of Novelty Lighters.	Senator Allran

Senator R. C. Soles, Jr., Chair

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 31, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Jessi Hayes	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 31, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gardner Payne	MWC
Robert Mann	NCSSA
E. Allen Mangum	NCSSA
Terri Allen	BEGINNINGS
Michael Hutson	MWC
LYNN HOLMES	NCCTA
CASANDRA WHITE	AOC
Joey Gardner	DMV License + Theft
Alison Roach	DMV
Johanna Reese	DOT
[illegible]	JDAL, PA

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

March 31, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mari Smith	NCAHP
Ke Wright	BCBSNC
Tenny Hunter	N.C.B.A.
Tom Vaughan	Child Fatality Task Force
MIKE MANN	DST

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 31, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Killian	Nelson Mullins
Rick Zechini	NC Assoc. of Realtors
Susan Valentine	Nationwide
Patrick Buffkin	MMR8
Pat Goddard	Johnston/NCAAO
Pete Rodda	Forsyth County/NCAMO
Paul Meyer	NCLM
David Baker	NCDOR
Bill Wilkes	DOR
Katherine Wilkerson	Lynch + Eatman, NCBA
Ron Ward	NCBA
David Ferrell	NCLTA

Senate Commerce Committee
Tuesday, March 31, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 135	Operation of Mopeds.	Senator Rand
SB 405	Real Property Sales Information.	Senator Hartsell
SB 448	Self-Service Storage Facilities.	Senator Hoyle

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 135
PROPOSED COMMITTEE SUBSTITUTE S135-CSSU-8 [v.2]

3/23/2009 12:49:59 PM

Short Title: Operation of Mopeds. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MOPEDS TO BE REGISTERED WITH THE DIVISION OF MOTOR VEHICLES AND TO HAVE IN FULL FORCE AND EFFECT A POLICY OF FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-10.1 reads as rewritten:

"**§ 20-10.1. Mopeds.**

(a) General Provisions. – It shall be unlawful for any person who is under the age of 16 years to operate a ~~moped as~~ moped, as defined in ~~G.S. 105-164.3~~ G.S. 105-164.3, upon any highway or public vehicular area of this State.

(b) Passengers. – It shall be unlawful to have any passengers on a moped.

(c) Registration. – Mopeds shall be registered with the Division in the same manner as any other motor vehicle. The owner shall pay the same fees and be issued the same type of registration card and plate issued for a motorcycle. In order to be registered with the Division and operated upon a highway or public vehicular area, a moped must meet the following requirements:

(1) The moped has a vehicle identification number, as required under G.S. 20-52(a)(2).

(2) The moped was designed and manufactured for use on public highways.

(d) Financial Responsibility. – It shall be unlawful to operate a moped on a public street or highway or public vehicular area without having in full force and effect financial responsibility as required by the provisions of Articles 9A and 13 of this Chapter. The Division shall treat a moped the same as any other motor vehicle for the purposes of compliance with Articles 9A and 13 of this Chapter."

SECTION 2. G.S. 20-51(9) is repealed.

SECTION 3. G.S. 20-140.4 reads as rewritten:

"**§ 20-140.4. Special provisions for motorcycles and mopeds.**

(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon ~~such motorcycle or moped,~~ a motorcycle, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f)."

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 135: Operation of Mopeds

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 30, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S135-CSSU-8		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 135 would:

- ***Require mopeds to be registered with the Division of Motor Vehicles.***
- ***Make it unlawful to operate a moped on a highway or public vehicular area without proper financial responsibility.***
- ***Prohibit an operator of a moped from carrying passengers.***

CURRENT LAW: Under current law, a moped is not required to be registered or carry liability insurance. A person must be at least 16 years old, but is not required to be licensed, to operate a moped on a highway or public vehicular area. The operator is subject to the same requirements as operators of motorcycles with regard to carrying passengers and wearing a helmet – the number of passengers may not exceed the number the vehicle was designed to carry, and the operator and passengers must wear helmets that comply with federal standards.

A moped is defined as a vehicle with a motor that does not exceed 50 cubic centimeters piston displacement and that cannot propel the vehicle faster than 30 miles per hour on a level surface. A vehicle capable of going faster than 30 miles per hour would fall under the definition of "motorcycle" rather than "moped" and would be required to be registered and carry liability insurance.

BILL ANALYSIS: The PCS for Senate Bill 135 would require that mopeds be registered with the Division of Motor Vehicles. Because the Division cannot register a vehicle without a vehicle identification number, which is required on the application for registration, any moped that does not have a vehicle identification number would not be able to be registered or operated on a highway or public vehicular area. A moped would also have to be designed and manufactured for use on public highways in order to be registered.

The PCS would make it unlawful to operate a moped on a highway or public vehicular area without having a policy of financial responsibility in full force and effect. It would also make it unlawful to operate a moped while carrying passengers.

EFFECTIVE DATE: The act would become effective December 1, 2009, and would apply to offenses committed on or after that date.

S135-SMSU-12(CSSU-8) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 405*
PROPOSED COMMITTEE SUBSTITUTE S405-CSLAf-3 [v.3]

3/30/2009 3:51:39 PM

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 family members or affiliated companies.
(5) A listing of any personal property conveyed with the transaction.

(6) Whether the transaction is the result of a forced 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.

SENATE BILL 405:
Real Property Sales Information

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 30, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S405-CSLAf-3		

SUMMARY: ***SB405 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. The Proposed Committee Substitute differs from the 1st Edition by eliminating a requirement that the tax assessor's office certify that the required sales information has been provided. The bill as amended will need to be re-referred to Senate Finance.***

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: This bill 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 family members or affiliated companies.
5. A listing of any personal property conveyed with the transaction.
6. Whether the transaction is the result of a forced sale.

[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.

The above information would be reported on a form developed by the Department of Revenue and would be recorded with the deed.

EFFECTIVE DATE: This proposal 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.

Martha Walston, counsel to the Revenue Laws Study Committee, substantially contributed to this summary.

S405-SMRC-4(CSLAf-3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 448
PROPOSED COMMITTEE SUBSTITUTE S448-CSRO-10 [v.1]

3/30/2009 6:55:09 PM

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.~~terminates; limit on value of property.

(a) 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.

(b) If the rental agreement contains a limit on the value of property stored in the occupant's storage space, the limit shall be presumed to be the maximum value of the property stored in that space.

"§ 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 in accordance with the provisions of Article 7A of Chapter 20 of the General Statutes. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the property or any damages to 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.

(e) If the rent or other charges for which the lien is claimed under this Article remains unpaid for one day following the maturity of the obligation to pay rent, the owner may deny the occupant access to the personal property located in the self-service storage facility until the time that all the rent and other charges are paid in full.

"§ 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.

...."

SECTION 2. G.S. 20-219.10(a)(1) reads as rewritten:

...

"(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, ~~and 160A-303.2~~ 160A-303.2, and 44A-43(b)(1a) only insofar as specifically provided;

..."

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 448:
Self-Service Storage Facilities

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	March 30, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S448-CSRO-10		Committee Co-Counsel

SUMMARY: ***Senate Bill 448 makes several changes to the law governing liens on personal property stored in self-service storage facilities, including:***

- ***Requiring an online search of UCC filings prior to sale of the property;***
- ***Authorizing the towing of a motor vehicle when the debt is 60 days past due;***
- ***Providing that notice of the lien may be given by regular mail rather than registered or certified mail;***
- ***Reducing the time a notice of sale must be published;***
- ***Authorizing an owner to deny access to the occupant after the debt is one day past due;***
- ***Providing that the care, custody, and control of the stored property remains vested in the occupant until the property is sold, and that the owner is a commercial landlord.***

The PCS makes a conforming change to Article 7A of Chapter 20.

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:

Senate Bill 448 makes several changes to the law, including:

- Requiring 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.
- Setting the presumed maximum value of the property at the amount contained as the limit in the rental agreement.
- Authorizing the towing of a motor vehicle pursuant to Article 7A of Chapter 20 when the debt remains unpaid for 60 days. The application of Article 7A is limited to certain statutes. The PCS makes a conforming change to add this provision to the list of statutes currently authorized. Article 7A also appears to create a lien in favor of the towing company.
- Changing 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, and changing the start date of the 10-day period to contest from receipt by the occupant to the date of mailing.
- Authorizing the owner to terminate the tenancy of the occupant at the expiration of the 10-day period.
- Modifying 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.
- Authorizing the owner to deny the occupant access to the storage facility when the debt is one day past due.
- Providing that the care, custody, and control of the property remains vested in the occupant until the property is sold. The owner is a commercial landlord who rents space.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S448-SMRO-18(CSRO-10) v1

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce** will NOT meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 7, 2009	11:00 AM	1027 LB

Today's Senate Commerce meeting is cancelled.

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S117 - Clarifying Development Moratoria Authority, S516 - Community Association Managers Licensure, and S982 - Small Business Assist Fund have been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 7, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 368	Various Changes in Motor Vehicle Law.-AB	Senator Jenkins
SB 625	No Deceptive Advertising/Business Location.	Senator Boseman
SB 652	Prohibit Sale of Novelty Lighters.	Senator Allran
SB 668	Amend Banking Laws.	Senator Soles, Jr.
SB 669	Banking Commission Appeals.	Senator Soles, Jr.
SB 698	City/County Fee Increase on Internet.	Senator Boseman
SB 809	Military Admission Fee Waiver/NCDL Renewal.	Senator Jones
SB 957	Special Enrollment Period/Group Health Ins.	Senator Nesbitt, Jr.

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Tuesday, April 14, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 14, 2009, in Room 1027 of the Legislative Building. Twenty-four members of the committee were present. Senator R.C. Soles presided. Kathryn Walker of Morehead City, Morgan Cunningham and Jacob Yaniero of Jacksonville, and Ridge Walker and Elliott McDowell of Yanceyville served as pages.

SB 668 – Amend Banking Laws.

Joseph A. Smith, Jr., NC Commissioner of Banks, was recognized to explain the bill. Senator Garrou moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the Banking Law to allow a bank to pay dividends on preferred shares issued to the United States Treasury and to issue and pay dividends on preferred shares to recapitalize itself. Senator Rand moved to report the PCS as favorable and the motion carried. A copy of the PCS and the summary is attached.

SB 669 – Banking Commission Appeals.

Commissioner Smith explained the bill. The bill clarifies the Banking Commission appellate procedure. Karen Cochrane-Brown, a staff attorney with the Research Division, was recognized to answer questions. Senator Soles removed the bill from the agenda. A copy of the bill and the summary is attached.

SB 652 – Prohibit Sale of Novelty Lighters.

Senator Allran was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS prohibits the retail sale and distribution of novelty lighters. Senator Rand offered an amendment to clarify language and moved for its adoption. The motion carried. Senator Rand offered a second amendment to prevent the distribution of free lighters as gifts or premiums. Senator Goodall moved for the adoption of the amendment and the motion carried. Kory Goldsmith, a staff attorney with the Research Division, was recognized to answer questions. Tom Vitaglione, Chair of the NC Child Fatality Task Force, was recognized to speak in favor of the bill. Jan Parker, Office of the State Fire Marshall, was recognized to display a variety of lighters. A copy of her handout is attached. Senator Purcell moved for a favorable report as amended and the motion carried. A copy of the PCS, the summary and the two amendments is attached.

HB 212 – Health Insurance Pool Pilot Program.

Representative Goforth was recognized to explain the bill which creates a special enrollment period in the North Carolina Group Health Insurance Continuation Law and provides eligible individuals with the same continuation rights as under the Federal American Recovery and Reinvestment Act of 2009. Dr. John Ashley, a member of the Buncombe County Medical Society, was recognized to answer questions. Tim Hovis, a staff attorney with the Research

Division, was recognized to answer questions. No vote was taken on the bill. A copy of the bill and the summary is attached.

SB 423 – Waive CDL Test Requirement for Military Pers.

Senator Brown was recognized to explain the bill. Senator McKissick moved to adopt the PCS for discussion and the motion carried. The PCS allows the Division of Motor Vehicles to waive the commercial motor vehicles skills test for members of the armed forces if the applicant meets specific qualifications. Senator Rand moved to adopt the PCS and report it favorably. The motion carried. A copy of the PCS and the summary is attached.

SB 625 – No Deceptive Advertising/Business Location
SB 809 – Military Admission Fee Waiver/NCDL Renewal
S957 – Special Enrollment Period Group Health Ins.

Due to limited time the bills were removed from the agenda.

The meeting adjourned at noon.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Joseph A Smith, Jr.
NC Commissioner of Banks

Senate Commerce Agenda
Tuesday April 14

adjourned noon

	Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
(4)	H212	Health Insurance Pool Pilot Program	Rep Crawford explained Dr. Ashley (Asheville Chamber) Business Healthcare Laura Copeland (Asheville Chamber)		Tim Hovis Rand take Tim Hovis rec to answer ?s	no vote
(5)	S423	Waive CDL Test Requirement for Military Pers.	Brown	PCS McKissick	Wendy Graf Ray	Rand moves
	✓ S625	No Deceptive Advertising/ Business Location	Boseman		Tim Hovis	
(3)	S652 ✓	Prohibit Sale of Novelty Lighters	Allran explained	PCS Rand	Kory Goldsmith *	Rand amends - moves fav. Tom Vitaliano - Child Protection Fatality Task Force - co-chair
(1)	S668 ✓	Amend Banking Laws	Soles	PCS Garrou	Karen Cochrane - Brown	Banking commissioner explained & answered questions > Rand moves
(2)	✓ S669	Banking Commission Appeals	Soles		Karen Cochrane - Brown	Commissioner Karen answer ?s > carried over
	✓ S809	Military Admission Fee Waiver/NCDL Renewal	Jones	PCS	Wendy Graf Ray	If fav., re-ref to Finance
	✓ S957	Special Enrollment Period Group Health Ins.	Nesbitt		Tim Hovis	

Rand amend
Goodall moves to adopt amend fav
Kennedy
2nd to pass ?s Jones moves that bills as amended fav.

next week
* all bills but H212
plus cemetery bill
S957

TH 10 9am
M 15

ask Joe
to talk to Amy

Senate Commerce Committee
Tuesday, April 14, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 212	Health Insurance Pool Pilot Program.	Rep. Goforth Rep. Whilden Rep.Rapp Rep. Fisher
SB 423	Waive CDL Test Requirement for Military Pers.	Sen. Brown
SB 625	No Deceptive Advertising/Business Location.	Sen. Boseman
SB 652	Prohibit Sale of Novelty Lighters.	Sen. Allran
SB 668	Amend Banking Laws.	Sen. Soles
SB 669	Banking Commission Appeals.	Sen. Soles
SB 809	Military Admission Fee Waiver/NCDL Renewal.	Sen. Jones
SB 957	Special Enrollment Period/Group Health Ins.	Sen. Nesbitt

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robbie Quinn	NC DMV 1100 New Bern Ave Raleigh
Charlie Diehl	NC Trucking Assoc.
John Palumbo	NCABA
Amy McConkey	Smith Anderson
Daniel Bean	K&L GATES
Gary Harris	NC Petroleum & Convenience Stores
Gregg Thompson	NFIB
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
Tom [illegible]	[illegible]
Richard O'Brien	PFFPNC
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
TED HAMBY	N.C. Dept of Ins.
Rose Williams	NC DOJ.
Will Flowers	Intern
Elbert Glass	NC Jaycee Bcen Ctr.
Ken Wright	BCBS NC
Andrew Hanson	Student
Boyd T Walley	Student
Phillip Giles	Cumberland Co.
John Bowdish	AstraZeneca
Becki Gray	John Locke Foundation
Doug Howey	NC Petroleum And Convenience Marketers
Rocky Gantt	NCCCC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	NC Chamber
Cam Cree	BPMHL
Bill Scoggin	ICLG
Andy Ellis	NCRMA
Christa Barbee	CAPA
Bill Rustin	ACP
Dava Hunt	Frankenton, NC Tender Loving Care/Amedisys
Chris Valauri	Valauri Group LLC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Samuel M. Brown	Governor's Page
McIver Mullins	Governor's Page
[illegible]	First Citizens Bank
Cady Thomas	NC Assn of Realtors
Cameron Hanley	Electricities of NC
Allison Waller	Charlotte Chamber
Nathan Batts	NCBA
David Anders	PFT-PAC
Alexander Wittig	AOC
Henry Hertz PA	N.C.B.A.
Joann Stevens	Stevens & Assoc

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 14, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Paschal	Young, Moore
Sylvia Scholl	SAFE Kids WAKE Co / WAKEMED
Jan Parker	OSFM / Safe Kids
Larry Stanford	Raleigh Fire Dept / PO Box 590 Raleigh, NC 27601
Tom Vitagliano	CHILD FATALITY TASK FORCE
Ken McLeod	CFSA - NC
Bailey Bacon	UNCC
Leslie Arnold	SOG - Daily Bulletin
[illegible]	Hunton & Williams
[illegible]	NCIMS
[illegible]	Governors Page

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

April 14, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jordan Schrader	Asheville Citizen-Times
[signature]	NMRS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
John White	Durham Chamber
[signature]	KVL Assets

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 668
PROPOSED COMMITTEE SUBSTITUTE S668-CSRO-11 [v.1]

4/6/2009 2:12:23 PM

Short Title: Amend Banking Laws. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A BANK TO PAY DIVIDENDS ON CERTAIN PREFERRED SHARES ISSUED TO THE UNITED STATES TREASURY AND TO ISSUE AND PAY DIVIDENDS ON PREFERRED SHARES TO RECAPITALIZE ITSELF.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-87.1. Payment of dividends on preferred shares issued to the United States Treasury.**

(a) Notwithstanding any other provision of this Chapter, the board of directors of any bank may declare and pay a dividend on preferred shares issued by the bank to the United States Treasury in connection with and as a condition of the bank's participation in the Capital Purchase Program authorized by Title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343).

(b) Notwithstanding any other provision of this Chapter, with the prior approval of the Commissioner of Banks and subject to any conditions the Commissioner may impose, a bank may issue preferred or preference shares and pay dividends thereon, in order to recapitalize itself."

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

SENATE BILL 668:
Amend Banking Laws

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 13, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Karen Cochrane-Brown Committee Co-Counsel
Analysis of:	PCS to First Edition S668-CSRO-11		

SUMMARY: ***Senate Bill 668 amends the Banking Law to allow a bank to pay dividends on preferred shares issued to the United States Treasury and to issue and pay dividends on preferred shares to recapitalize itself.***

CURRENT LAW:

As part of the federal Troubled Asset Relief Program (TARP), the U.S. Treasury established a voluntary Capital Purchase Program to encourage financial institutions to build capital in order to increase the flow of financing to businesses and consumers. Under the program, the Treasury Department offered to purchase senior preferred shares in qualifying banks and thrifts, including State chartered institutions, under standardized terms. One of the required terms is that the preferred shares pay a cumulative dividend of 5% per annum for the first five years, which will reset to 9% after five years.

Under current law, State chartered banks are not authorized to pay dividends on preferred shares as required by the Capital Purchase Program.

BILL ANALYSIS:

Senate Bill 668 amends the Banking Law to allow State chartered banks that are participating in the Capital Purchase Program to declare and pay dividends on preferred shares issued to the U.S. Treasury in connection with the Program. In addition, with the prior approval of the Commissioner of Banks, a bank may issue and pay dividends on preferred shares in order to recapitalize itself.

EFFECTIVE DATE:

This act is effective when it becomes law.

S668-SMRO-25(CSRO-11) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 669

Short Title:	Banking Commission Appeals.	(Public)
Sponsors:	Senators Soles, Hoyle, McKissick, and Rand.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE BANKING COMMISSION APPELLATE PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, ~~the Administrative Procedure Act,~~ the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Banking Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of ~~an~~ appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of ~~said~~ the ~~Commission and by written notice to the Commissioner of Banks, appeal to~~Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The ~~cause~~ petition for judicial review shall be entitled ~~"State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)."~~ "(insert name) Petitioner v. State of North Carolina on Relation of the Banking Commission." A copy of the petition for judicial review shall be served upon the Commissioner of Banks pursuant to G.S. 150B-46. The petition ~~It~~ shall be placed on the civil issue docket of ~~such~~ the court and shall have precedence over other civil actions. ~~In the event of an appeal~~ Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake ~~County within 15 days thereafter.~~ County. The standard of review of a petition for judicial review of a final order of the Banking Commission shall be as provided in G.S. 150B-51(b)."

SECTION 2. G.S. 53-188 reads as rewritten:

"**§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article and any~~ Article. Any person aggrieved by any such rule, regulation, order or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to ~~an appeal~~petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 3. G.S. 53-208.27(b) reads as rewritten:

"(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 4. G.S. 53-215 reads as rewritten:

"**§ 53-215. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-227.1 may, within ~~30~~ 20 days after final decision of the Commissioner, appeal ~~his~~ in writing any decision to the State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 5. G.S. 53-224.30 reads as rewritten:

"**§ 53-224.30. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, ~~appeal~~ appeal, in writing, such decision to the North Carolina State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 6. G.S. 53-231 reads as rewritten:

"**§ 53-231. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved

party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 7. G.S. 53-232.17 reads as rewritten:

"**§ 53-232.17. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 8. G.S. 53-252 reads as rewritten:

"**§ 53-252. Appeal of Commissioner's decision.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 9. G.S. 53-272 reads as rewritten:

"**§ 53-272. Appeals.**

The Banking Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 10. G.S. 53-289 reads as rewritten:

"**§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article, and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d)."

SECTION 11. G.S. 53-412 reads as rewritten:

"**§ 53-412. Commissioner hearings; appeals.**

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be ~~appealed~~ appealed, in writing, to the Commission for ~~review.~~ review, pursuant to G.S. 53-92(d). The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) ~~Appeals~~ Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 12. This act is effective when it becomes law.

SENATE BILL 669:
Banking Commission Appeals

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 13, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 669 amends the law governing the administrative hearings procedure for appeals to the Banking Commission and to clarify the process for judicial review of Commission determinations.

CURRENT LAW:

Unlike most State agencies, the State Banking Commission and the Commissioner of Banks are subject to Article 3A of the Administrative Procedure Act (Chap. 150B). Article 3A governs the process for administrative hearings or contested cases which are not conducted by an Administrative Law Judge.

Under current law, prior to taking an agency action, the Commissioner of Banks must give the parties in the case an opportunity for a hearing to be conducted by the Commissioner or a designated hearing officer. After a hearing and the issuance of an order by the Commissioner, a party may seek appeal to the Banking Commission, which has authority to review the actions of the Commissioner. The Chair of the Commission may appoint a panel of not less than five members to review the record, hear arguments and make a recommended decision to the full Commission. Within 20 days of a final order of the Commission, a party may appeal to the Superior Court of Wake County. Judicial review of Banking Commission decisions is governed by Article 4 of Chapter 150B.

BILL ANALYSIS:

Section 1 amends the general provisions governing appeals to the Banking Commission. The bill clarifies that the notice of appeal must state the grounds for the appeal and set forth in numbered order the assignments of error for review. Failure to state the grounds as well as failure to comply with the Commission's briefing schedule is a basis for dismissal of the appeal. Once the Commission makes a final decision, a party may petition for judicial review to Wake County Superior Court in accordance with Article 4 of Chapter 150B. This language makes it clear that a party may appeal a decision of the Commissioner to the Banking Commission and may petition for judicial review of a final decision of the Commission.

This section also clarifies that the standard of review of a final decision of the Banking Commission is whether the decision was:

- In violation of the constitution;
- In excess of the agency's statutory authority;
- Made upon unlawful procedure;
- Affected by error of law;
- Unsupported by substantial evidence in view of the entire record; or
- Arbitrary, capricious, or an abuse of discretion.

Sections 2 through 11 of the bill conform other laws under the jurisdiction of the Banking Commission to the appeals provisions set forth in Section 1 of the bill, including:

- The Consumer Finance Act.
- The Money Transmitters Act.
- The Reciprocal Interstate Banking Act.
- The Interstate Branch Banking Act.
- The Bank Holding Company Act.
- The International Banking Act.
- The Refund Anticipation Loan Act.
- The Reverse Mortgage Act.
- The Check Cashing Businesses Act.
- The Trust Companies and Interstate Trusts Act.

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

S669-SMRO-26(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 652
PROPOSED COMMITTEE SUBSTITUTE S652-CSRC-4 [v.1]

4/6/2009 5:55:26 PM

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 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) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame.

(3) Any mechanical or electrical device primarily used to ignite fuel for fireplaces, or charcoal or gas grills.

(4) 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.

SENATE BILL 652:
Prohibit Sale of Novelty Lighters

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 6, 2009
Introduced by:	Sen. Allran	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S652-CSRC-4		

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 proposed committee substitute removes language that would have included lighters with flashing lights. 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.

S652-SMRC-6(CSRC-4) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 652

Short Title:	Prohibit Sale of Novelty Lighters.	(Public)
Sponsors:	Senators Allran; Bingham and Purcell.	
Referred to:	Commerce.	

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, or has flashing lights for entertainment or has other entertaining features unrelated to its function as a lighting device. 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 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) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame.

(3) Any mechanical or electrical device primarily used to ignite fuel for fireplaces, or charcoal or gas grills.

(4) 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/14/09

S. B. No. 652 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 2

Rep.)
Sen.) Rand

1 moves to amend the bill on page 1, line s 30-31

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the lines and renumbering

4 the remaining exceptions accordingly.

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SIGNED Tg Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/14/09

S. B. No. 652 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
Sen.) Rand

moves to amend the bill on page 1, line 23

( ) WHICH CHANGES THE TITLE

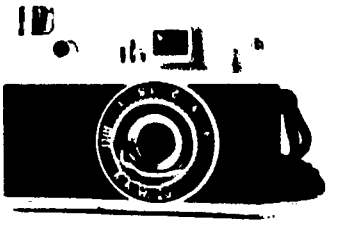
by inserting the words "or give"; ~~before~~ ~~the~~ ~~word~~ "distribute" before the phrase "or distribute",

SIGNED Jay Rand

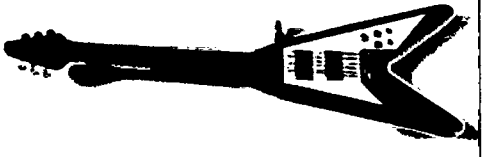
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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

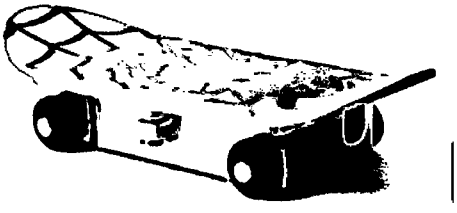
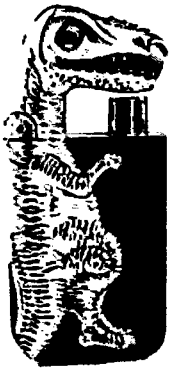








Lighters or toys?

Can you tell the difference? Could a child?

For more information about the dangers of novelty lighters, visit:
www.oregon.gov/OSP/SFM

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.

HOUSE BILL 212:
Health Insurance Pool Pilot Program

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 13, 2009
Introduced by:	Reps. Goforth, Fisher, Rapp, Whilden	**Prepared by:**	Tim Hovis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: 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: 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-SMRG-10(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 423
PROPOSED COMMITTEE SUBSTITUTE S423-CSSU-13 [v.2]

4/13/2009 5:56:58 PM

Short Title: Waive CDL Test Requirement for Military Pers. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO WAIVE THE COMMERCIAL MOTOR VEHICLES SKILLS TEST FOR MEMBERS OF THE ARMED FORCES IF THE APPLICANT MEETS THE QUALIFICATIONS FOR ISSUANCE AND HAS PREVIOUSLY TAKEN A SKILLS TEST FOR THE VEHICLE CLASS AND SIZE TO BE OPERATED OR HAS, WHILE IN SERVICE TO AN ACTIVE OR RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES, OPERATED THE VEHICLE CLASS AND SIZE FOR A RELEVANT TWO-YEAR PERIOD PRIOR TO APPLICATION FOR THE COMMERCIAL DRIVERS LICENSE AND HAS TAKEN A SKILLS TEST ADMINISTERED BY THE MILITARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.13 is amended by adding a new subsection to read:

"(c1) The Division may waive the skills test for applicants at the time they apply for a commercial drivers license if the applicant meets all of the following:

(1) The applicant has passed all required written knowledge exams.

(2) The applicant has not, and certifies that the applicant has not, at any time during the two years immediately preceding the date of application done any of the following:

a. Had any drivers license or driving privilege suspended, revoked, or cancelled;

b. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;

c. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or

d. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2.

(3) The applicant certifies, and provides satisfactory evidence on the date of application, that the applicant is a member of an active or reserve component of a branch of the United States armed forces and is regularly employed in a job requiring the operation of a commercial motor vehicle, and the applicant either:

a. Has previously taken and successfully completed a skills test that was administered by a State with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for the two-year period immediately preceding the date of application a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military."

SECTION 2. This act becomes effective October 1, 2009, and applies to any commercial drivers license issued on or after that date.

SENATE BILL 423:
Waive CDL Test Requirement for Military Pers

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 14, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S423-CSSU-13		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 423 would allow the Division of Motor Vehicles to waive the skills test for an otherwise qualified commercial drivers license applicant who is a member of the armed forces, regularly employed in a job requiring the operation of a commercial motor vehicle, and either:***

- ***Has successfully completed a skills test for the appropriate class and type of commercial motor vehicle that was administered by a State with a classified license and testing system; or***
- ***Has operated the appropriate class and type of commercial motor vehicle for a two-year period prior to applying for the license, and has successfully completed a skills test administered by the military.***

CURRENT LAW: G.S. 20-37.13 requires that an applicant pass both a knowledge and a skills test for driving a commercial motor vehicle prior to being issued a commercial drivers license (CDL). The tests are to be prescribed and conducted by the Division of Motor Vehicles and must comply with minimum federal standards.

BILL ANALYSIS: The PCS for Senate Bill 423 would authorize the Division to waive the skills test required under G.S. 20-37.13 for a CDL applicant that meets the following requirements:

- Has passed written knowledge exam.
- In the last two years, has not:
  - Had a driving privilege suspended, revoked, or cancelled
  - Had convictions that would require mandatory revocation of a license or CDL disqualification
  - Been convicted of violating traffic control laws in connection with an accident
  - Refused a chemical test when charged with an implied consent offense
- Is an active or reserve member of the armed forces, regularly employed in a job requiring the operation of a commercial motor vehicle, and either:
  - Has taken and successfully completed a skills test, administered by a State with a classified licensing and testing system, behind the wheel of a commercial motor vehicle of the class and type for which the applicant seeks to be licensed; or
  - Has operated for the two-year period prior to the date of application a commercial motor vehicle of the class and type for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military.

EFFECTIVE DATE: The bill becomes effective October 1, 2009, and applies to any commercial drivers license issued on or after that date.

S423-SMSU-24(CSSU-13) v3

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.

SENATE BILL 625:
No Deceptive Advertising/Business Location

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 6, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	First Edition		

SUMMARY: 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 below must also apply.

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.

EFFECTIVE DATE: Senate Bill 625 becomes effective October 1, 2009.

S625-SMRG-9(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 809
PROPOSED COMMITTEE SUBSTITUTE S809-CSSU-16 [v.2]

4/13/2009 4:02:57 PM

Short Title: License Renewal/Active Military Duty. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF A RESERVE COMPONENT OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS, AND TO ALLOW A SIXTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY OUTSIDE OF THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside of the United States shall be considered to have a valid license until 60 days after the date of release from active duty outside of the United States upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty ~~in the armed forces of the United States~~ and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the ~~armed forces~~ Armed Forces of the United States.

(2) A member of ~~the national guard or of~~ a reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

SENATE BILL 809:
License Renewal/Active Military Duty

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 14, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S809-CSSU-16		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 809 would modify drivers license renewal provisions for members of the Armed Forces and reserve components of the Armed Forces who are on active duty in the following three ways:***

- ***Allow those members to renew a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.***
- ***Extend the validity of a drivers license that expired while the member was on active duty outside of the United States.***
- ***Allow an active duty reserve member stationed outside the State to renew a drivers license by mail. (Currently allowed for members of Armed Forces on active duty.)***

CURRENT LAW: G.S. 90-7(f)(3a) allows a person to apply to the Division of Motor Vehicles to renew a drivers license during the 180-day period before the license expires and prohibits the Division from accepting renewal applications before that period.

BILL ANALYSIS: The PCS for Senate Bill 809 would amend existing motor vehicle law as follows:

Section 1 – Would add a new definition in Chapter 20 (Motor Vehicles) of the General Statutes, defining "Reserve components of the Armed Forces of the United States" and specifying that the definition includes the Army and Air National Guard.

Section 2 – Would add a new subdivision to G.S. 20-7(f) (Duration and Renewal of Licenses) to:

- Allow the Division of Motor Vehicles to renew the drivers license of a member of the Armed Forces or of a reserve component of the Armed Forces with orders placing the member on active duty outside of the State, regardless of the date of expiration of the license.
- Classify as valid a drivers license that expired while a member of the Armed Forces or of a reserve component of the Armed Forces was on active duty outside of the United States. The license would continue to be valid until 60 days after the date of release from active duty outside of the United States. Licenses that were revoked, rescinded or invalidated under some other provision of law would not be declared valid under this provision.

The PCS would further amend G.S. 20-7(f) to allow reservists on active duty stationed outside of the State to renew their drivers license by mail, as is currently the case for active duty armed forces.

Sections 3 and 4 – Would capitalize the term Armed Forces wherever it occurs throughout Chapter 20 of the General Statutes.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to all licenses expiring on or after its effective date.

S809-SMSU-30(CSSU-16) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 957

Short Title:	Special Enrollment Period/Group Health Ins.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL ENROLLMENT PERIOD IN THE NORTH CAROLINA GROUP HEALTH INSURANCE CONTINUATION LAW AND PROVIDE ELIGIBLE INDIVIDUALS WITH THE SAME CONTINUATION RIGHTS AS UNDER THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. Article 53 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"**§ 58-53-41. Extension of election period and effect on coverage.**

(a) Definitions. – As used in this section, the following terms have the meanings specified:

(1) "Act" means the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5, effective February 17, 2009.

(2) "Assistance eligible individual" has the same meaning as found in section 3001 of the Act.

(b) An employee or member who does not have an election of continuation coverage, as described in this Part, in effect on the effective date of this section, but who would be an assistance eligible individual under Title III of the Act if that election were in effect, may elect continuation coverage pursuant to the Part. The election shall be made no later than 60 days after the date the administrator of the group policy subject to this Part (or other entity involved) provides the notice required by section 3001(a)(7) of the Act. The administrator of the group policy subject to this Part (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this section within 60 days after the effective date of this section.

(c) Continuation of coverage elected pursuant to subsection (b) of this section shall commence with the first period of coverage beginning on or after the effective date of this section and shall not extend beyond the period of continuation coverage that would have been required under G.S. 58-53-35 if the coverage had instead been elected pursuant to G.S. 58-53-10.

(d) With respect to any individual electing continuation coverage pursuant to this section, the period beginning on the date of the qualifying event and ending on the date of the first period of coverage on or after the effective date of this section shall be disregarded for purposes of determining the 63-day period referred to in G.S. 58-68-30(c)(2)a. and G.S. 58-51-17(a)(2)a."

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

SENATE BILL 957:
Special Enrollment Period/Group Health Ins

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 6, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 957 extends the enrollment period under Article 53 of Chapter 58, Group Health Insurance Continuation and Conversion Privileges, for continuation coverage under the State's group health continuation law.

BACKGROUND: The federal American Recovery and Reinvestment Act of 2009 included a 65% subsidy for COBRA continuation coverage for up to 9 months for workers who were involuntarily terminated and did not elect continuation coverage or terminated the coverage. Federal COBRA law applies to employers with 20 or more employees. The federal Act specifically applies this subsidy to state continuation coverage (state "mini-COBRA" laws) for employers with fewer than 20 employees. Under the federal law, the individual pays 35% of the premium and the health insurer then receives the remaining 65% in federal tax credits.

BILL ANALYSIS: Senate Bill 957 adds a new section to Article 53 to add the following:

- Involuntarily terminated employees who failed under the State's continuation coverage (mini-COBRA") to elect continuation coverage when eligible or who terminated their continuation coverage may elect continuation coverage under the extended enrollment period.
- The administrator of the group policy subject to State continuation coverage must provide notice of the extension of the enrollment period to eligible individuals within 60 days of the act's effective date.
- To obtain continuation coverage, the eligible individual must enroll within 60 days after the group policy administrator provides notice of the extension of the enrollment period.

The bill only extends the period for enrollment. It does not extend the period of continuation coverage.

EFFECTIVE DATE: Senate Bill 957 is effective when it becomes law.

S957-SMRG-8(e1) v1

SENATE COMMERCE COMMITTEE
Thursday, April 16, 2009 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on April 16, 2009, in Room 1027 of the Legislative Building. Twenty-three members of the committee were present. Senator R.C. Soles presided. Laura Perry and Amanda Fangukanu of Clayton, James Butler of Raleigh, Sha'Lantae' Carmon of Scotland Neck, Indya Brown of Greensboro, Sydnor Coffman of Greenville, Morgan Cunningham of Jacksonville, and Melanie Martin of Wendell served as pages.

SB 669 – Banking Commission Appeals.

McNeill Chestnut, NC Commissioner of Banks, was recognized to explain the bill. The bill clarifies the Banking Commission appellate procedures. Senator Vaughan moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

SB 18 – Amend Cemetery Act.

Senator Goss was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS amends the NC Cemetery Act by requiring proof of a sufficient trust fund or surety bond prior to approving a change of control of a cemetery company. It also changes the investments options for perpetual care trust funds, requires cemetery companies to list the cost of opening and closing a grave space as part of the contract and requires cemetery companies to allow the interment of the purchaser of a preneed contract who dies before making a final payment. Michael Rulifson, Consumers Alliance of the Triangle, was recognized to speak in favor of the bill. Jody Rentz was recognized to explain the problems she faced trying to get the cemetery to bury her parents. She had several handouts that outlined complaints against cemeteries in North Carolina (attached) and was available to answer questions. Dickie Powell, NC Cemetery Commission, was recognized to speak in favor of the bill and answer questions. Jimmy Miller, NC Cemetery Commission Administrator, was recognized to answer questions. Senator Soles appointed a Commerce subcommittee to further look at the bill. He appointed Senator Stevens as chair and Senator Goodall, Senator Malone, Senator Vaughan and Senator Goss as members. A copy of the bill and the summary is attached.

SB 809 – Military Admission Fee Waiver/NCDL Renewal.

Senator Jones was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS authorizes a member of the armed forces or of a reserve component of the armed forces to renew a drivers license upon receipt of deployment orders and allows a sixty-day grace period for an unexpired license upon release from active duty outside of the United States. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

SB 957 – Special Enrollment Period Group Health Ins.

Senator Nesbitt was recognized to explain the bill which creates a special enrollment period in the NC Group Health Insurance Continuation Law and provides eligible individuals with the same continuation rights as under the Federal American Recovery and Reinvestment Act of

2009. Ted Hamby, Life and Health Insurance Division Deputy Commissioner, Department of Insurance, was recognized to answer questions. Tim Hovis, a staff attorney with the Research Division, was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

SB 625 – No Deceptive Advertising/Business Location.

Senator Boseman was recognized to explain the bill. The bill prohibits deceptive advertising about geographical location by businesses that supply perishable products. Senator Goodall moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 9:48 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, April 20, 2009

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

FAVORABLE

S.B. **625** No Deceptive Advertising/Business Location.
Sequential Referral: None
Recommended Referral: None

S.B. **669** Banking Commission Appeals.
Sequential Referral: None
Recommended Referral: None

S.B. **957** Special Enrollment Period/Group Health Ins.
Sequential Referral: None
Recommended Referral: None

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

S.B. **809** Military Admission Fee Waiver/NCDL Renewal.
Draft Number: 55339
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 16, 2009	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 18	Amend Cemetery Act.	Senator Goss
SB 625	No Deceptive Advertising/Business Location.	Senator Boseman
SB 669	Banking Commission Appeals.	Senator Soles, Jr.
SB 809	Military Admission Fee Waiver/NCDL Renewal.	Senator Jones
SB 957	Special Enrollment Period/Group Health Ins.	Senator Nesbitt, Jr.

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Thursday, April 16, 2009, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 18	Amend Cemetery Act.	Sen. Goss
SB 625	No Deceptive Advertising/Business Location.	Sen. Boseman
SB 669	Banking Commission Appeals.	Sen. Soles
SB 809	Military Admission Fee Waiver/NCDL Renewal.	Sen. Jones
SB 957	Special Enrollment Period/Group Health Ins.	Sen. Nesbitt

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

April 16, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chip Baggett	NCMS
Jimmy Miller	NC Cemetery Commission
Ralph Mackey	Public member
Judge Tom Farrell	District Ct- District 18
Wheaton Casey	Programs + Special Projects + Pretrial Direct
Ardis Watkins	SEANC
Kimberly Reynold	LT. Gov's Office
Heet Kabel	Sen. Boseman

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowe	BPM LLC
James Barrow	Service Corp Int'l.
DAVID BARNES	Poyner Spruill
[illegible]	Poyner Spruill
TED HAMBY	NC Dept of Ins.
Rose Williams	NC DOI
Michael Rullson	Funeral Consumers Alliance of the Triangle
Jody Rentz	Citizen
Johanna Reese	DOT
Thomas Moore	Edwards & Welsh
[illegible]	NC Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joseph A. Smith, Jr.	NC Commissioner of Banks
Rusty Lyon	NC Cemetery Association
Bob Case	NC Cemetery Association
Linda Cotton	NC Cemetery Commission
Frank Ross Jr.	NC Cemetery Commission
Michael Powell	N.C. Cemetery Commission
Michelle Frazier	MFS
John McMillan	MFS
Paul Stock	NCBA
Henry M Lancaster	FDMANC
G. B. 2	S.I.F

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	K&L Gates
Rick Zechini	NC Assn. of Realtors
McNeil Chestnut	For the Comm. of Bics

SENATE BILL 669

Short Title:	Banking Commission Appeals.	(Public)
Sponsors:	Senators Soles, Hoyle, McKissick, and Rand.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE BANKING COMMISSION APPELLATE PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, ~~the Administrative Procedure Act,~~ the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Banking Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of ~~an~~ appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of ~~said~~ the ~~Commission and by written notice to the Commissioner of Banks, appeal to~~Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The ~~cause~~ petition for judicial review shall be entitled ~~"State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)."~~ "(insert name) Petitioner v. State of North Carolina on Relation of the Banking Commission." A copy of the petition for judicial review shall be served upon the Commissioner of Banks pursuant to G.S. 150B-46. The petition ~~It~~ shall be placed on the civil issue docket of ~~such~~ the court and shall have precedence over other civil actions. ~~In the event of an appeal~~ Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake ~~County within 15 days thereafter.~~ County. The standard of review of a petition for judicial review of a final order of the Banking Commission shall be as provided in G.S. 150B-51(b)."

SECTION 2. G.S. 53-188 reads as rewritten:

"**§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article and any~~ Article. Any person aggrieved by any such rule, regulation, order or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to ~~an appeal~~petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 3. G.S. 53-208.27(b) reads as rewritten:

"(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 4. G.S. 53-215 reads as rewritten:

"**§ 53-215. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-227.1 may, within ~~30~~ 20 days after final decision of the Commissioner, appeal ~~his~~ in writing any decision to the State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 5. G.S. 53-224.30 reads as rewritten:

"**§ 53-224.30. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, ~~appeal~~ appeal, in writing, such decision to the North Carolina State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 6. G.S. 53-231 reads as rewritten:

"**§ 53-231. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved

party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 7. G.S. 53-232.17 reads as rewritten:

"**§ 53-232.17. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 8. G.S. 53-252 reads as rewritten:

"**§ 53-252. Appeal of Commissioner's decision.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 9. G.S. 53-272 reads as rewritten:

"**§ 53-272. Appeals.**

The Banking Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 10. G.S. 53-289 reads as rewritten:

"**§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article, and any~~ Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d)."

SECTION 11. G.S. 53-412 reads as rewritten:

"**§ 53-412. Commissioner hearings; appeals.**

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be ~~appealed~~ appealed, in writing, to the Commission for ~~review.~~ review, pursuant to G.S. 53-92(d). The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) ~~Appeals~~ Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 12. This act is effective when it becomes law.

SENATE BILL 669:
Banking Commission Appeals

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 13, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 669 amends the law governing the administrative hearings procedure for appeals to the Banking Commission and to clarify the process for judicial review of Commission determinations.

CURRENT LAW:

Unlike most State agencies, the State Banking Commission and the Commissioner of Banks are subject to Article 3A of the Administrative Procedure Act (Chap. 150B). Article 3A governs the process for administrative hearings or contested cases which are not conducted by an Administrative Law Judge.

Under current law, prior to taking an agency action, the Commissioner of Banks must give the parties in the case an opportunity for a hearing to be conducted by the Commissioner or a designated hearing officer. After a hearing and the issuance of an order by the Commissioner, a party may seek appeal to the Banking Commission, which has authority to review the actions of the Commissioner. The Chair of the Commission may appoint a panel of not less than five members to review the record, hear arguments and make a recommended decision to the full Commission. Within 20 days of a final order of the Commission, a party may appeal to the Superior Court of Wake County. Judicial review of Banking Commission decisions is governed by Article 4 of Chapter 150B.

BILL ANALYSIS:

Section 1 amends the general provisions governing appeals to the Banking Commission. The bill clarifies that the notice of appeal must state the grounds for the appeal and set forth in numbered order the assignments of error for review. Failure to state the grounds as well as failure to comply with the Commission's briefing schedule is a basis for dismissal of the appeal. Once the Commission makes a final decision, a party may petition for judicial review to Wake County Superior Court in accordance with Article 4 of Chapter 150B. This language makes it clear that a party may appeal a decision of the Commissioner to the Banking Commission and may petition for judicial review of a final decision of the Commission.

This section also clarifies that the standard of review of a final decision of the Banking Commission is whether the decision was:

- In violation of the constitution;
- In excess of the agency's statutory authority;
- Made upon unlawful procedure;
- Affected by error of law;
- Unsupported by substantial evidence in view of the entire record; or
- Arbitrary, capricious, or an abuse of discretion.

Sections 2 through 11 of the bill conform other laws under the jurisdiction of the Banking Commission to the appeals provisions set forth in Section 1 of the bill, including:

- The Consumer Finance Act.
- The Money Transmitters Act.
- The Reciprocal Interstate Banking Act.
- The Interstate Branch Banking Act.
- The Bank Holding Company Act.
- The International Banking Act.
- The Refund Anticipation Loan Act.
- The Reverse Mortgage Act.
- The Check Cashing Businesses Act.
- The Trust Companies and Interstate Trusts Act.

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

S669-SMRO-26(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-CSSU-22 [v.1]

4/15/2009 10:00:04 PM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, AND REQUIRING CEMETERY COMPANIES TO ALLOW THE INTERMENT OF THE PURCHASER OF A PRENEED CONTRACT WHO DIES BEFORE MAKING THE FINAL PAYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount or that the applicant has obtained a performance bond in lieu of the trust account under G.S. 65-66(f) or G.S. 65-70(f)."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64, and that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in certificates of deposit and money market funds in accordance with G.S. 32-71(a). ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the

burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates or both with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(f1) In the event the purchaser dies before final payment is collected, the seller shall allow the purchaser to be interred and shall collect any unpaid balance from the purchaser's estate.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section, but may require that a casket be enclosed within a vault. A cemetery company shall not charge a fee for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year,~~three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

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

SENATE BILL 18:
Amend Cemetery Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 16, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S18-CSSU-22		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Prohibit the Cemetery Commission from approving a change of control of a cemetery company until the applicant provides proof of sufficient merchandise and preconstruction trust accounts or appropriate surety bonds in lieu of those accounts.***
- ***Require that funds in a perpetual care trust account be invested in certificates of deposit and money market funds only.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Require cemetery companies to allow a purchaser to be interred if he or she dies before final payment is collected.***
- ***Prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller.***
- ***Increase from 1 to 3 years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts.***

The PCS also makes several grammatical and technical changes, including updating references to statutes that have been recodified.

BILL ANALYSIS:

Change of control/posting bond in lieu of making deposits to trust accounts. When a person acquires control of a cemetery company or otherwise acts to effectively change the control of a company, the person must apply to the Commission for approval of the change. The PCS would prohibit the Commission from approving the change of control until the applicant provides sufficient evidence that appropriate merchandise and preconstruction trust accounts are being maintained or that appropriate bonds have been obtained in lieu of those accounts. Cemetery companies are required to establish trust accounts for proceeds from preneed contracts for property or services and proceeds from the sale of mausoleums and belowground crypts prior to construction. The accounts must be funded in an amount equal to 60% of proceeds received on contracts. However, companies are allowed to post an acceptable performance bond in lieu of maintaining those merchandise and preconstruction trust accounts.

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. The PCS would amend the law to require that the funds be invested and reinvested only in certificates of deposit and money market funds.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. The PCS would specify that the contract must include the cost for opening and closing each grave space.

Burial when purchaser of preneed contract dies prior to final payment. Current law does not address situations where a purchaser of a preneed contract dies prior to making final payment on the contract. Therefore, the cemetery company may delay the burial until the debt is paid in full. The PCS would require the cemetery company to proceed with the burial and collect any unpaid balance from the purchaser's estate.

Purchase of vaults. The PCS would prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault (an underground receptacle designed to encase and protect a casket) from the cemetery company or any other particular seller. The company would be able to require that a casket be enclosed within a vault but would not be able to charge a fee for delivery or inspection of a vault purchased from another seller.

Extension for completing construction of mausoleums. Currently, a cemetery company that sells preconstruction mausoleums or belowground crypts must begin construction within 48 months of the date of the first sale, and construction must be completed within 5 years after that date. An extension up to one year may be granted by the Commission for completion of construction for good cause. The PCS would allow the Commission to grant extensions up to three years.

EFFECTIVE DATE: The act would become effective October 1, 2009.

S18-SMSU-39(CSSU-22) v1

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Complaint filed against local funeral director

By Justin Goble and Lynn Hotaling

Three months after paying for a headstone that has not been erected at her father's gravesite, a Whittier woman has accused the former owner of Moody Funeral Home of taking her family's money.

Sheila Tolley last week filed a criminal complaint with the Sylva Police Department against Reg Moody Jr. Tolley alleges her family paid Moody's in August for a headstone for her father, Henry Ashe, who died in July. Ashe is buried at Fairview Memorial Gardens. While the check for the tombstone had cleared, there is still no marker on her father's grave, she said.

Tolley said her troubles with Moody Funeral Home started shortly after her father's death.



These flowers in Fairview Memorial Gardens mark the grave of Henry Ashe, who died in July. Ashe's daughter, Sheila Tolley, has filed a criminal complaint with the Sylva Police Department against Reg Moody Jr. for not installing the tombstone her family has paid for at the gravesite. Tolley said a check was sent to Moody Funeral Home in August to pay for the marker; that check has cleared, yet nothing has been done. "An employee at Moody's told me Reg put the money in his personal account to pay for his 'toys,' " she said. Sylva Police Detective John Buchanan said an investigation into the matter is under way. – *Herald photo by Justin Goble.*

"Dad bought a plot at the cemetery in 1984, but when we went to have the graveside service, they were trying to put him in someone else's lot," she said. "So we went ahead and had the service, and the whole time the backhoe was digging out the lot he had bought. By the time they



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were done with the service, the people from Moody's were still digging out his grave. They had to put him back on refrigeration and bury him later."

Tolley said her family then ordered a tombstone through Moody Funeral Home using money from Ashe's funeral fund. Though the family picked out a marker and sent a check to Moody's so the marker could be installed in August, the funeral home has yet to place the stone.

"When I called to ask what was being done, one of the employee's at Moody's told me Reg had deposited it into his personal account to pay for his 'toys,' " Tolley said. "It's only when I threatened to take legal action that they started back-peddling and telling us that something would be done. They keep saying they'll take care of it, but nothing has been done. So I filed a complaint with the police department.

"I don't care about money," Tolley said. "I just want closure."

Sylva Police Detective John Buchanan said he had begun an investigation into the matter, but there is nothing to report so far.

"It's one of those very slow cases," he said. "I'm waiting to meet with the district attorney and discuss it, then we'll go from there."

When contacted Tuesday, Moody first said he didn't know there had been a complaint filed and then said The Herald could contact his attorney, Jay Coward.

Coward indicated a short time later that he was unaware of the criminal complaint and therefore could not comment.

The Moody family has operated the Sylva funeral home since 1922, when it was begun by P.E. Moody, great-grandfather of Reg Moody Jr. Foreclosure notices for the business were listed in The Herald in July, but the property auction was delayed until Sept. 12, when Phil Ferguson of Clyde was the initial high bidder at $799,000. However, Sylva law firm Coward, Hicks and Siler, which includes Jay Coward, filed an upset bid of $838,950 on Sept. 24 and purchased the property on Oct. 4. Attorney David Moore, also of Coward, Hicks and Siler, is listed on court papers as agent.

When contacted by The Herald the week after the sale, Moore said the firm was holding the funeral home for a client but declined to name the client.

Moore two weeks ago referred The Herald's call to Coward, who said the law firm is holding the funeral home in trust for a client he could not name.

When contacted Tuesday, Coward said that as far as he knew the law firm could hold the funeral home in trust indefinitely, but that he expects a closing in the near future that will put the funeral home in the client's name.

Moody's remains in business, with Reg Moody Jr. the licensed funeral director in charge, Coward said.

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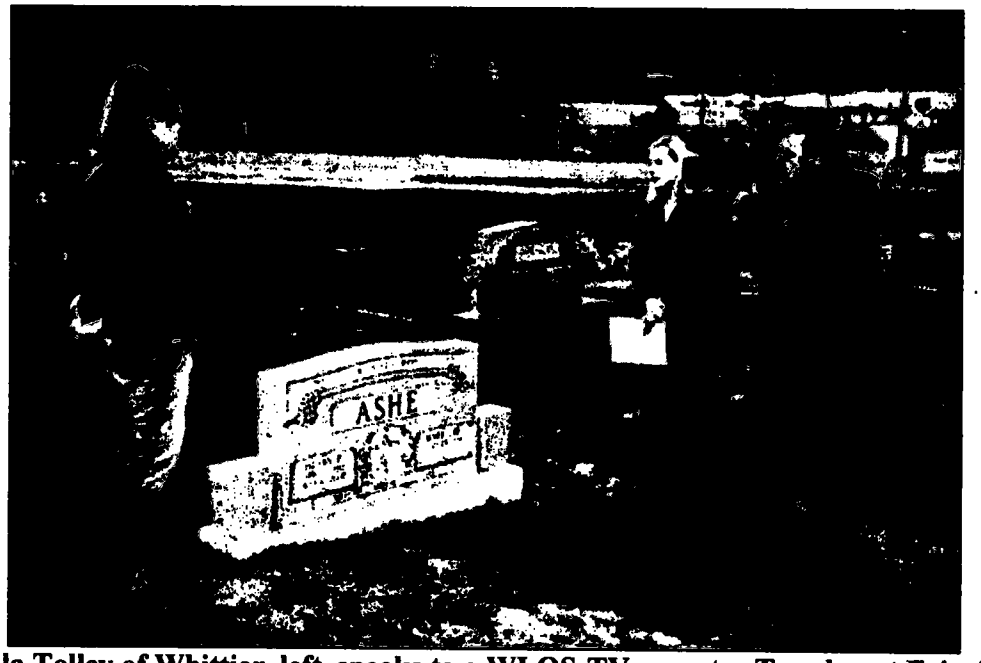
More families add complaints about Moody Funeral Home

By Justin Goble and Lynn Hotaling

More families have come forward claiming grave markers ordered through Moody Funeral Home have not been erected.

The reports come after a criminal complaint against Reg Moody Jr. was filed two weeks ago by Sheila Tolley of Whittier.

Tolley told The Herald she and her family paid Moody Funeral Home in August for a headstone for her father, Henry Ashe, who died in July. His tombstone has now been erected, but that action only came after media attention given her case after she contacted the Sylva Police Department, she said.



Sheila Tolley of Whittier, left, speaks to a WLOS-TV reporter Tuesday at Fairview Memorial Gardens. Tolley's recent complaint about Moody Funeral Home's delay in erecting a grave marker for her late father, Henry Ashe, triggered an ongoing criminal investigation by the Sylva Police Department. The monument was placed on Ashe's grave this week, but Tolley said she has no intention of dropping the complaint and that Moody's only installed the headstone because of the media attention she'd attracted. Two families have won claims against Moody's in small claims court, and a third family's case is set to be heard today (Thursday). – *Herald photo by Nick Breedlove*

Ashe is buried at Fairview Memorial Gardens, which is operated by Moody Funeral Home. According to Tolley and others who contacted this newspaper with similar reports, no grave marker can be erected in that cemetery unless it is contracted through Moody's.



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Tolley said Tuesday she intends to pursue the criminal complaint, even though the marker she paid for in August has finally been installed.

"I found out about it by surprise," she said. "I came out here last weekend to visit, and (the marker) was just lying on the ground. They must have placed it then or sometime Monday afternoon (Nov. 12). We do have some closure, but it's bittersweet," Tolley said. "I didn't want to (have to go through all this) and don't think anyone else should have to either."

Tolley's situation is similar to one experienced by Ellen Ashe, who said she and her husband waited months to get a headstone placed on their burial site at Fairview.

"We thought it was time to start thinking about things like that," Ashe said. "We've had lots in that cemetery for 40 years, and we decided to go ahead and get a headstone for them. My husband Winfred has cancer, and I'm not in good health, so we wanted to go ahead and take care of those things."

Ashe said they had bought their plots through Melton-Riddle Funeral Home, but since Moody's owns the cemetery, that funeral home had to be in charge of placing a headstone.

Moody charged the family $3,000, which Ashe said was paid in April of 2006. Though the check was deposited two days after it was received by the funeral home, Ashe said they continued to delay its installation.

"They told us every kind of tale," Ashe said. "We went every month to check on it, and every time we showed up it was something different. They said it was lost in the computer, it was out being polished or any number of stories."

Eventually, Ashe said she and her husband took Moody to small claims court. Though their trial kept getting deferred, she said a judge finally ordered Moody to install the headstone.

"He did it in May of this year," she said. "Even though the judge told him to do it, he kept putting it off and putting it off until we thought we were going to have to go back to court. He finally did it late in the afternoon the day before we were supposed to be back in court. All in all, we waited 13 months for Moody's to put up a headstone."

The case is being investigated by Sylva Police Detective John Buchanan, who said Moody could be potentially charged with obtaining property by false pretenses. That charge is a Class I felony, he said.

"The investigation is ongoing," Buchanan said. "We're awaiting a decision by the District Attorney along with various documents before we can move forward."

Two other families have told The Herald they are still waiting for the headstones they paid for months ago.

Brenda Cloer, whose mother, Virginia Farmer, died March 13, said she paid Moody's for a vault and grave marker the next day. Melton-Riddle was in charge of the funeral, but she had to go through Moody's for her mother's vault and headstone, she said.

"It will be eight months tomorrow, and there's not a thing on her grave, only grass," she said of her mother's grave.

Cloer has already been to small claims court and the magistrate ruled in her favor and awarded her $2,449.48 plus interest, according to documents on file in the Jackson County Clerk of

Court's Office, but Cloer said she has no idea when or if there will be a marker on her mother's grave.

Without a headstone and vase, she can't put out flowers for her mother, she said.

"I couldn't put anything out for Mother's Day or on her birthday. I've got flowers in the closet for Mother's Day and her birthday, and I've got some ready for Thanksgiving and Christmas, but I don't know if I'll get to put them out," Cloer said.

According to Cloer, Moody can keep the money if he would let her order a grave marker somewhere else.

"My mother does not deserve this," she said Tuesday. "There's no way she'd do it to him."

Another family is preparing to visit small-claims court this week in an effort to resolve their long-standing dispute with Moody's.

"We're in the same situation," said Sandy Miller of Sylva. "Lots of people are."

Miller's mother, Geneva Stephens, died April 15. Her sister, Wanda Herren of Cullowhee, wrote Moody's a check on May 2 for a marker that has still not been erected, though the check has cleared, Miller said.

According to Miller, she was told by a funeral home employee that her order never had been turned in to the monument company. Miller received that information around the time the funeral home was put up for auction after foreclosure notices were placed in The Herald.

Moody had not returned The Herald's call by press time Wednesday. During a conversation a week ago, he referred the newspaper to Sylva attorney Jay Coward; Coward said late Tuesday that Waynesville lawyer Don Patten is representing Moody in any criminal complaints. Patten had not returned The Herald's call by press time.

The Moody family has operated the Sylva funeral home since 1922, when it was begun by P.E. Moody, great-grandfather of Reg Moody Jr. Foreclosure notices for the business were published in July, but the property auction was delayed until Sept. 12, when Phil Ferguson of Clyde was the initial high bidder at $799,000. However, Sylva law firm Coward, Hicks and Siler, which includes Jay Coward, filed an upset bid of $838,950 on Sept. 24 and purchased the property on Oct. 4. Attorney David Moore, also of Coward, Hicks and Siler, is listed on court papers as agent. Both Moore and Coward have indicated that their firm is holding the funeral home as trustee for a client they cannot name.

When contacted Nov. 6, Coward said that as far as he knew the law firm could hold the funeral home in trust indefinitely, but that he expects a closing in the near future that will put the funeral home in the client's name.

Moody's remains in business, with Reg Moody Jr. the licensed funeral director in charge, Coward said.

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dvertisers:

P. E. Moody Memorial Gardens
(Formally Fairview Memorial Gardens)
Bill Moody Memorial Park
(Formally Swain Memorial Park)
714 West Main Street Sylva, NC 28779
Phone: 828-586-4014 Fax: 828-586-8081

Tuesday, January 23, 2007

To: ALL area Funeral Homes who have burials in
P. E. Moody Memorial Gardens or Bill Moody Memorial Park
From: Linda McCall Management of
P. E. Moody Memorial Gardens or Bill Moody Memorial Park

First of all let me introduce myself as the new manager of the above named cemeteries. I have a number of years experience in the funeral industry and I look forward to working with each of you as we serve the families of this community together. It is my hope that we will offer the highest quality service to our families and work together for the good of our families.

I would also like to advise you that there are some changes concerning the interments at the above named cemeteries.

- As of February 1, 2007 we will no longer accept any interment authorization forms for interment in our cemeteries with exception of our own form.
- Each family will be required to meet with me in my office a minimum of 36 hours prior to the service to sign the interment forms, physically inspect the interment site, sign the agreement for the opening and closing fees, pay the said fees, and fill out all information for the North Carolina Cemetery Commission accounting.
- ALL burials will be scheduled by the cemeteries not by the funeral homes. Scheduling times for services are at the discretion of the cemetery based on services that have been set .All funerals will be scheduled on a "first call, first set" basis.
- No service will be held if the family does not see me 36 hours before the set service time, therefore it is in your best interest to call me as soon as possible when you pick up a deceased that owns property in one of these cemeteries.
- Payments of fees to the cemetery are the responsibility of the legal representative or family of the deceased and they must sign all paperwork.
- ALL fees must be paid in full prior to the service or the service will not be held and the family will be notified as to the reason.
- NO service will be accepted at the cemetery if notice is not given and the family has not been out to inspect the site at least 36 hours prior to the service time. If you do not adhere to these guidelines and the service can not be held because of this the family will be notified that your oversight has caused the cancellation of services for their loved one.

Please call with any questions or concerns. Thank you for your time and consideration in this matter.

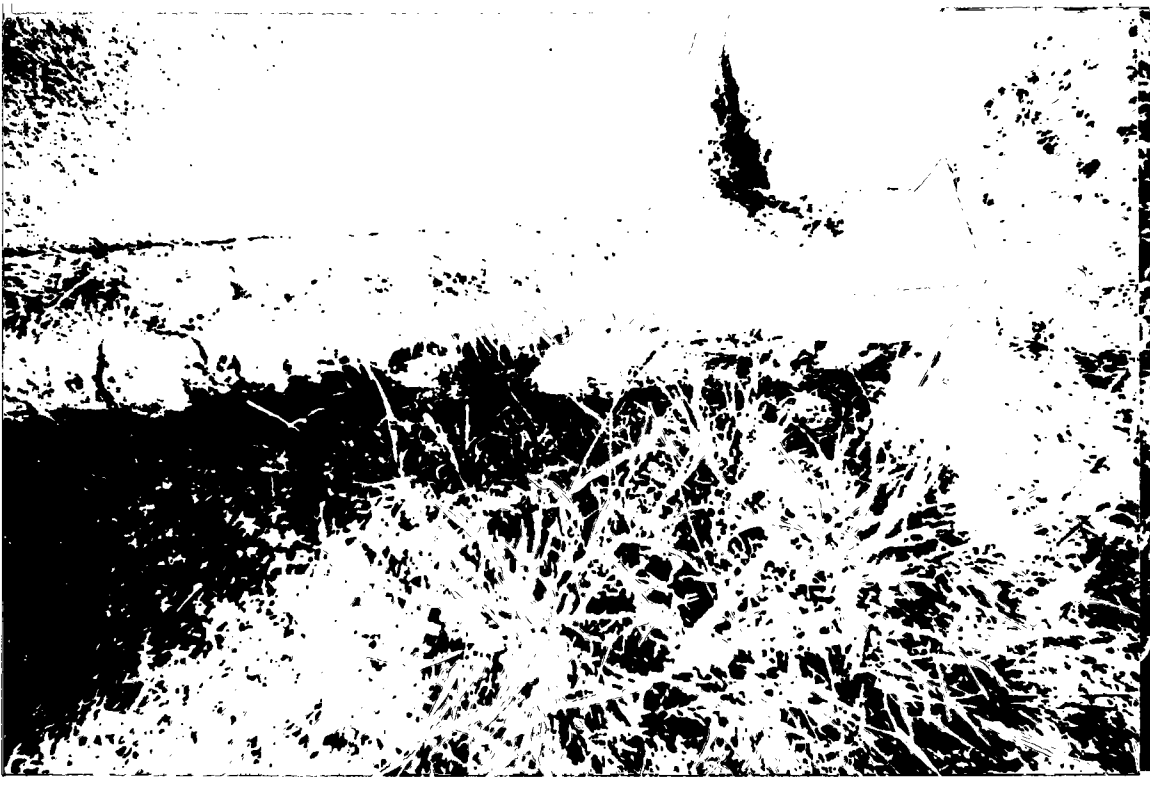
Sincerely,

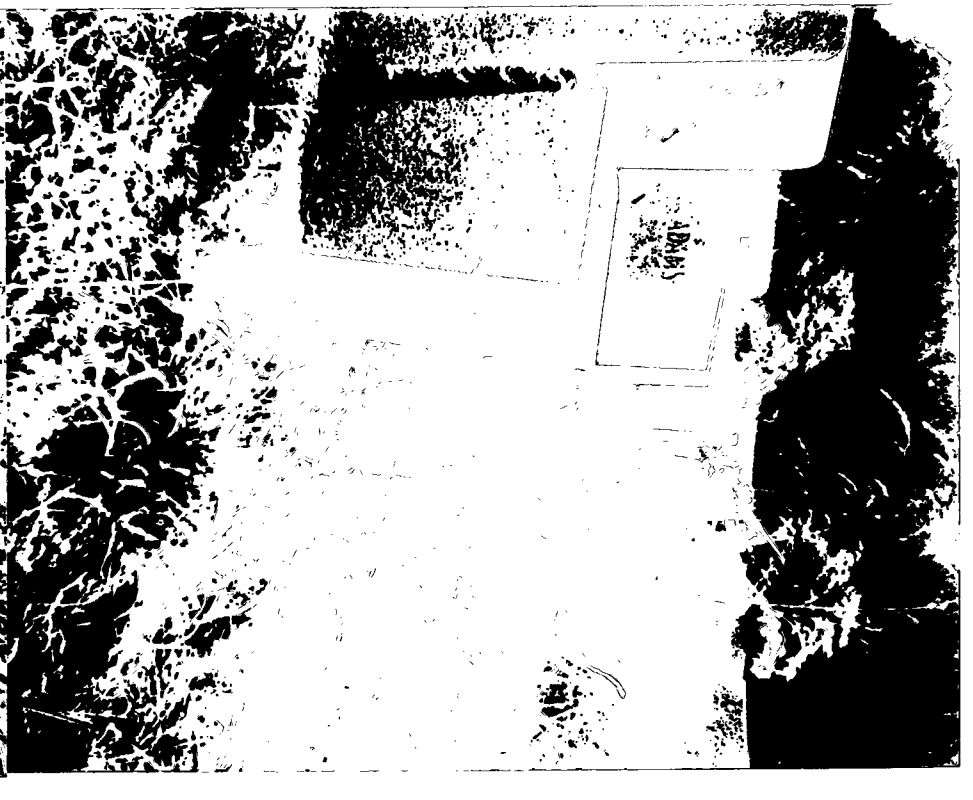
Linda McCall

Linda McCall
Manager; P. E. Moody Memorial Garden and Bill Moody Memorial Park









GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 809
PROPOSED COMMITTEE SUBSTITUTE S809-CSSU-16 [v.2]

4/13/2009 4:02:57 PM

Short Title: License Renewal/Active Military Duty. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF A RESERVE COMPONENT OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS, AND TO ALLOW A SIXTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY OUTSIDE OF THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside of the United States shall be considered to have a valid license until 60 days after the date of release from active duty outside of the United States upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty ~~in the armed forces of the United States~~ and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the ~~armed forces~~ Armed Forces of the United States.

(2) A member of ~~the national guard or of~~ a reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

SENATE BILL 809:
License Renewal/Active Military Duty

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 14, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S809-CSSU-16		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 809 would modify drivers license renewal provisions for members of the Armed Forces and reserve components of the Armed Forces who are on active duty in the following three ways:***

- ***Allow those members to renew a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.***
- ***Extend the validity of a drivers license that expired while the member was on active duty outside of the United States.***
- ***Allow an active duty reserve member stationed outside the State to renew a drivers license by mail. (Currently allowed for members of Armed Forces on active duty.)***

CURRENT LAW: G.S. 90-7(f)(3a) allows a person to apply to the Division of Motor Vehicles to renew a drivers license during the 180-day period before the license expires and prohibits the Division from accepting renewal applications before that period.

BILL ANALYSIS: The PCS for Senate Bill 809 would amend existing motor vehicle law as follows:

Section 1 – Would add a new definition in Chapter 20 (Motor Vehicles) of the General Statutes, defining "Reserve components of the Armed Forces of the United States" and specifying that the definition includes the Army and Air National Guard.

Section 2 – Would add a new subdivision to G.S. 20-7(f) (Duration and Renewal of Licenses) to:

- Allow the Division of Motor Vehicles to renew the drivers license of a member of the Armed Forces or of a reserve component of the Armed Forces with orders placing the member on active duty outside of the State, regardless of the date of expiration of the license.
- Classify as valid a drivers license that expired while a member of the Armed Forces or of a reserve component of the Armed Forces was on active duty outside of the United States. The license would continue to be valid until 60 days after the date of release from active duty outside of the United States. Licenses that were revoked, rescinded or invalidated under some other provision of law would not be declared valid under this provision.

The PCS would further amend G.S. 20-7(f) to allow reservists on active duty stationed outside of the State to renew their drivers license by mail, as is currently the case for active duty armed forces.

Sections 3 and 4 – Would capitalize the term Armed Forces wherever it occurs throughout Chapter 20 of the General Statutes.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to all licenses expiring on or after its effective date.

S809-SMSU-30(CSSU-16) v3

SENATE BILL 957

Short Title:	Special Enrollment Period/Group Health Ins.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL ENROLLMENT PERIOD IN THE NORTH CAROLINA GROUP HEALTH INSURANCE CONTINUATION LAW AND PROVIDE ELIGIBLE INDIVIDUALS WITH THE SAME CONTINUATION RIGHTS AS UNDER THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. Article 53 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"**§ 58-53-41. Extension of election period and effect on coverage.**

(a) Definitions. – As used in this section, the following terms have the meanings specified:

(1) "Act" means the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5, effective February 17, 2009.

(2) "Assistance eligible individual" has the same meaning as found in section 3001 of the Act.

(b) An employee or member who does not have an election of continuation coverage, as described in this Part, in effect on the effective date of this section, but who would be an assistance eligible individual under Title III of the Act if that election were in effect, may elect continuation coverage pursuant to the Part. The election shall be made no later than 60 days after the date the administrator of the group policy subject to this Part (or other entity involved) provides the notice required by section 3001(a)(7) of the Act. The administrator of the group policy subject to this Part (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this section within 60 days after the effective date of this section.

(c) Continuation of coverage elected pursuant to subsection (b) of this section shall commence with the first period of coverage beginning on or after the effective date of this section and shall not extend beyond the period of continuation coverage that would have been required under G.S. 58-53-35 if the coverage had instead been elected pursuant to G.S. 58-53-10.

(d) With respect to any individual electing continuation coverage pursuant to this section, the period beginning on the date of the qualifying event and ending on the date of the first period of coverage on or after the effective date of this section shall be disregarded for purposes of determining the 63-day period referred to in G.S. 58-68-30(c)(2)a. and G.S. 58-51-17(a)(2)a."

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

SENATE BILL 957:
Special Enrollment Period/Group Health Ins

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 6, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 957 extends the enrollment period under Article 53 of Chapter 58, Group Health Insurance Continuation and Conversion Privileges, for continuation coverage under the State's group health continuation law.

BACKGROUND: The federal American Recovery and Reinvestment Act of 2009 included a 65% subsidy for COBRA continuation coverage for up to 9 months for workers who were involuntarily terminated and did not elect continuation coverage or terminated the coverage. Federal COBRA law applies to employers with 20 or more employees. The federal Act specifically applies this subsidy to state continuation coverage (state "mini-COBRA" laws) for employers with fewer than 20 employees. Under the federal law, the individual pays 35% of the premium and the health insurer then receives the remaining 65% in federal tax credits.

BILL ANALYSIS: Senate Bill 957 adds a new section to Article 53 to add the following:

- Involuntarily terminated employees who failed under the State's continuation coverage (mini-COBRA") to elect continuation coverage when eligible or who terminated their continuation coverage may elect continuation coverage under the extended enrollment period.
- The administrator of the group policy subject to State continuation coverage must provide notice of the extension of the enrollment period to eligible individuals within 60 days of the act's effective date.
- To obtain continuation coverage, the eligible individual must enroll within 60 days after the group policy administrator provides notice of the extension of the enrollment period.

The bill only extends the period for enrollment. It does not extend the period of continuation coverage.

EFFECTIVE DATE: Senate Bill 957 is effective when it becomes law.

S957-SMRG-8(e1) v1

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.

SENATE BILL 625:
No Deceptive Advertising/Business Location

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 6, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: 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 below must also apply.

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.

EFFECTIVE DATE: Senate Bill 625 becomes effective October 1, 2009.

S625-SMRG-9(e1) v1

SENATE COMMERCE COMMITTEE
Tuesday, April 21, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on April 21, 2009, in Room 1027 of the Legislative Building. Twenty-six members of the committee were present. Senator R.C. Soles presided. DJ Lester of Person County, Noah McMichael of Wake County and Stephen Moore of Wake County served as pages.

Senator Soles asked for a moment of silence in memory of Senator Vernon Malone who passed away Saturday, April 18, 2009.

SB 117 – Clarifying Development Moratoria Authority.

Senator Hoyle was recognized to explain the bill and answer questions. The bill clarifies that a local government may not impose a moratorium on development approvals for the purpose of developing and adopting a new or revised development ordinance. Lisa Martin, a lobbyist for the NC Homebuilders Association, was recognized to speak in favor of the bill. Paul Meyer, the League of Municipalities' Chief Legislative Counsel, was recognized to express concerns about the bill and speak in opposition of it. Ben Hitchings, NC Planning Association, was recognized to answer questions and he spoke in opposition to the bill. Kory Goldsmith, a staff attorney with the Research Division, was recognized to answer questions. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

SB 368 – Various Changes in Motor Vehicle Law - AB.

Senator Jenkins was recognized and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. Wendy Graf Ray, a staff attorney with the Research Division, was recognized to explain the PCS, which authorizes several changes to NC Motor Vehicle laws. Colonel Walter Wilson of the State Highway Patrol was recognized to answer questions. Senator Jenkins moved for a favorable report with a referral to Senate Finance Committee and the motion carried. A copy of the PCS and the summary is attached.

SB 458 – Require H.S. Diploma/GED/Bail Bondsman.

Senator Swindell was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS combines SB 458 and SB 789 (No Bail Bondsman License/Mis. Drug Conviction) and requires an applicant for licensure as a bail bondsman or runner to have obtained a high school diploma or its equivalent; and prohibits a person from being licensed if the person is convicted of a misdemeanor drug violation. Mike Mann, a lobbyist for the NC Bail Agents Association, was recognized to speak in favor of the bill and answer questions. Mark Cartret, NC Bail Agents Association President, was recognized to speak in favor of the bill. Senator Berger moved for a favorable report and the motion carried. A copy of the PCS, the bills, and the summary is attached.

SB 647 – Amend CPA Laws/Practice Privileges.

Senator Rand was recognized to explain the bill and moved to adopt the PCS for discussion. The PCS clarifies various provisions under the laws pertaining to certified public accountants and allows public accountants certified or licensed outside this state to practice in North Carolina under certain circumstances. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 11:58 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 21, 2009

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

FAVORABLE

S.B. **117** Clarifying Development Moratoria Authority.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 22, 2009

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

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

S.B. **368** Various Changes in Motor Vehicle Law.-AB

Draft Number:	55344
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **458** Require H. S. Diploma/GED/Bail Bondsman.

Draft Number:	35292
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **647** Amend CPA Laws/Practice Privileges.

Draft Number:	15245
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

(1) rent of silence - in memory of Sen. Malone

adjourned 11:58 a

Senate Commerce Agenda
Tuesday, April 21

	Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
(1)	S117	Clarifying Development Moratoria Authority	Hoyle explain/answer ?'s		Kory rec to answer ?'s & explain the bill	Rucho moves -
(2)	S368	Various Changes in Motor Vehicle Law-AB	Jenkins	PCS Jenkins	Wendy rec to explain bill	Ref to ~~Approp/Base Budget~~ Finance Walter Ed. Wilson SHP - rec. to ans ?'s Jenkins moves
(3)	S458	Require H.S. Diploma/ GED/Bail Bondsman	Swindell	PCS Rand	Kory rec. to explain bill	Mike Mann, NC Bail Agents Assn. lobbyist to speak in fav. & ans ?'s Berger moves
(4)	S647	Amend CPA Laws/Practice Privileges	Rand	PCS Rand	Karen	Rand moves
	S761	Street Construction/Developer Responsibility	Brown		Wendy	
	S780	Struc. Settlement Annuities/Ins. Guar. Assn.	Berger		Kory	
	S782	Repeal Pistol/Crossbow Transfer Permit	Berger	PCS	Steve	pulled
	~~S789~~	~~No Bail Bondsman License/Mis. Drug Conviction~~	Swindell	PCS	Kory	Rolled into S458
	~~S820~~	~~Create New Titling Categories~~	Hartsell		Wendy	PULL

S117

Lisa Martin, NC Homebuilders. Doesn't change existing law, but clarifies law. Trying to get local gov't's to use moratoria as a first choice

Paul Meyer, League of Municipalities, significant concerns over legislation. Local govts. use moratoriums to stop bad developers/developments. Oppose legislation Rec. to answer ?'s

Ben Hitchings NC Planning Assn. rec'd to answer ?'s and speak in opposition to bill.

S458

Mark Cartret President NC Bail Agents Assn.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 21, 2009.	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 117	Clarifying Development Moratoria Authority.	Senator Hoyle
SB 368	Various Changes in Motor Vehicle Law.-AB	Senator Jenkins
SB 458	Require H. S. Diploma/GED/Bail Bondsman.	Senator Swindell IV
SB 647	Amend CPA Laws/Practice Privileges.	Senator Rand
SB 761	Street Construction/Developer Responsibility.	Senator Brown
SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Senator Berger
SB 782	Repeal Pistol/Crossbow Transfer Permit.	Senator Berger
SB 789	No Bail Bondsman License/Mis. Drug Conviction.	Senator Swindell IV
SB 820	Create New Titling Categories.	Senator Hartsell

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, April 21, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 117	Clarifying Development Moratoria Authority.	Sen. Hoyle
SB 368	Various Changes in Motor Vehicle Law.-AB	Sen. Jenkins
SB 458	Require H. S. Diploma/GED/Bail Bondsman.	Sen. Swindell
SB 647	Amend CPA Laws/Practice Privileges.	Sen. Rand
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SB 782	Repeal Pistol/Crossbow Transfer Permit.	Sen. Berger
SB 789	No Bail Bondsman License/Mis. Drug Conviction.	Sen. Swindell
SB 820	Create New Titling Categories.	Sen. Hartsell

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Walter J. Wilson Jr.	NC Highway Patrol
Marc Nichols	NCSHP
Kevin Lacy	NCDOT
Andrew Meehan	NC Elec Co-ops

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CASANDRA WHITE	AOC
Joey Gardner	DMV License & Theft
Allison Roach	NCDMV
Johanna Reese	DOT
Dennis Allen	NC Rifle & Pistol Assoc
ANTHONY ROULETTE	NRA
	NCAPL
DAVID BARNES	Poyner Spruill
Henry N. Patterson, Jr.	Patterson Harkavy LLP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCB
Jeff Rau	GRNC
DAVID M. SCHMIDT	GRNC
Cameron Moore	BAJE
[illegible]	NCBAA
Reggie Holley	NCBAA
Mallory Hatcher	MWC
Mark Black	NCBAA
Vicky Young	DOT
LOWELL MILLER	NC L+H Ins Guaranty Assoc
William S. Patterson	Hunton & Williams

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dick Barnes	OSHA
Dennis Patterson	OSHA
Lisa Marlow	NC Home Builders
R. Paul Wilms	WGR
M Contract	NCBAA
L. Powell	NCBAA
Jim Ahler	NCACRA
[signature]	S.A.
Paul Parks	NCAE
F. Paul Valone	Grass Roots North Carolina
Derald Hafner	" " " "

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MaryBe McMillan	NC AFL-CIO
Debra DeCamillis	UNC-106
Patricia Rawls	NCACC
[illegible]	NCLM
[illegible]	[illegible]
Ben Hitchings	NCAPA
[illegible]	[illegible]
[illegible]	RAMC
[illegible]	CAFC
[illegible]	Flint & Locke

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 21, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Allison Cooper	RLW Attorneys, PA
Kim Breed	NCBA
Henry Jones	Attorney-Raleigh
VL McBride	NCTA
Charlie Dodd	NC Trucking Assn.
Bob Sumner	NCFA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Gray McCabe	NC Licensed Victim's
Todd Barlow	NC Advocates for Justice
Kelly B Graham	NC Advocates for Justice
Colleen Kochanek	KLG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 117

Short Title:	Clarifying Development Moratoria Authority.	(Public)
Sponsors:	Senators Hoyle; Blake and Jenkins.	
Referred to:	Commerce.	

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LOCAL GOVERNMENT MAY NOT IMPOSE A MORATORIUM ON DEVELOPMENT APPROVALS FOR THE PURPOSE OF DEVELOPING AND ADOPTING A NEW OR REVISED DEVELOPMENT ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(h) reads as rewritten:

"(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by ~~law.~~ law, except for the purpose of developing and adopting new or amended ordinances. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection."

SECTION 2. G.S. 160A-381(e) reads as rewritten:

"(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by ~~law.~~ law, except for the purpose of developing and adopting new or amended ordinances. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by

the city and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection."

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

SENATE BILL 117:
Clarifying Development Moratoria Authority

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 117 would prohibit municipalities and counties from adopting temporary moratoria on any development if the purpose of the moratoria is to develop and adopt new or amended ordinances. The act would be effective when it becomes law.***

CURRENT LAW: Municipalities (Chapter 160A) and Counties (153A) may adopt zoning and development regulation ordinances (G.S. 160A-381 and G.S. 153A-340 respectively), and may adopt temporary moratoria on development subject to certain procedural and substantive restrictions. The duration of the moratoria must be reasonable in light of the specific conditions warranting the moratorium and may not exceed the amount of time needed to correct, modify or resolve the conditions.

An ordinance establishing a moratorium must expressly include the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

A city or county must hold a public hearing prior to adopting a moratorium ordinance. If the moratorium will be for 60 or fewer days, there must be at least 7 days notice prior to public hearing. If the moratorium is for 61 or more days, the city or county must follow the regular procedure for adopting an ordinance, which includes publication of the notice not less than 10 days and not more than 25 days prior to the hearing. Absent imminent threat of harm to the public, the shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratoria. A moratorium ordinance may be extended under limited circumstances.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 368
PROPOSED COMMITTEE SUBSTITUTE S368-CSSU-7 [v.13]

4/20/2009 10:05:01 PM

Short Title: Various Changes in Motor Vehicle Law.-AB (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR A RETIRED STATE HIGHWAY PATROL SPECIAL REGISTRATION PLATE; TO PROVIDE FOR THE RECOVERY OF CIVIL PENALTIES ASSESSED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY; TO REQUIRE THAT ALL MOTOR VEHICLES USED IN INTRASTATE COMMERCE WEIGHING MORE THAN TEN THOUSAND POUNDS BE MARKED; TO MODIFY THE REQUIREMENTS FOR FLAGS AND LIGHTING AND WHEN HEADLAMPS WOULD BE REQUIRED TO BE USED ON LOADS THAT ARE PROJECTING FROM THE END OR SIDES OF A COMMERCIAL MOTOR VEHICLE OR A MOTOR VEHICLE WEIGHING MORE THAN TEN THOUSAND POUNDS AND ENGAGED IN COMMERCE; TO REQUIRE SAFE TIRES ON COMMERCIAL MOTOR VEHICLES AS REQUIRED BY PART 393 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS; TO MAKE A CHANGE TO THE WEIGHT AND SIZE PENALTY PROVISIONS TO ALLOW FOR THE ASSESSMENT OF A CIVIL PENALTY FOR ONLY THAT AMOUNT OF WEIGHT IN EXCESS OF THE PERMITTED AMOUNT, TO REQUIRE THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO ASSESS CIVIL FINES FOR VIOLATIONS OF THE SPECIAL PERMIT REQUIREMENTS OF G.S. 20-119, AND TO PREVENT MOTOR CARRIERS FROM OPERATING VEHICLES THAT HAVE BEEN DECLARED "OUT-OF-SERVICE"; TO REQUIRE BRAKES AS STANDARD EQUIPMENT FOR SEMITRAILERS BEING PULLED BY TRACTOR TRUCKS AND OTHER PULL UNITS; TO REQUIRE THAT OWNERS OF MOTORCYCLES MAINTAIN IN GOOD WORKING ORDER DIRECTIONAL SIGNALS INSTALLED BY THE MANUFACTURER; TO MODIFY THE SEAT BELT EXEMPTION PROVIDED FOR GARBAGE AND RECYCLING TRUCK OPERATORS AND PASSENGERS TO COMPLY WITH FEDERAL LAW; TO PROHIBIT THE OPERATION OF A DIGITAL VIDEO DISC PLAYER AT ANY POINT FORWARD OF THE BACK OF A DRIVER'S SEAT WHILE OPERATING A MOTOR VEHICLE; TO INCREASE THE CAP ON THE MAXIMUM ALLOWABLE SUPERVISORY PERSONNEL IN THE STATE HIGHWAY PATROL FROM TWENTY-ONE PERCENT TO TWENTY-THREE PERCENT; AND TO ENSURE THAT PROCEEDS FROM LEASE OF PROPERTY OWNED BY THE STATE HIGHWAY PATROL AS PART OF THE VIPER PROJECT BE USED TO CONSTRUCT, MAINTAIN, AND SUPPORT THE PROJECT, AS REQUESTED BY THE STATE HIGHWAY PATROL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(104) reads as rewritten:

"(104) Retired State Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. An individual who has retired from the North Carolina State Highway ~~Patrol.~~Patrol, presenting to the Division, along with the application for the plate, a copy of the retiree's retired identification card or letter of retirement.

b. The surviving spouse of a person who had ~~a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.~~retired from the State Highway Patrol who, along with the application for the plate, presents a copy of the deceased retiree's identification card or letter of retirement and certifies in writing that the retiree is deceased and that the applicant is not remarried.

~~c. The surviving spouse of a person who qualified for a retired highway patrol plate so long as the surviving spouse applies for the plate within ninety (90) days of the qualifying spouse's death and does not remarry.~~"

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-91.4. Civil penalties assessed by the Department of Crime Control and Public Safety; procedures for recovery.**

(a) Unless collection of penalties is made pursuant to G.S. 20-96, G.S. 20-382.2, or some other statutory provision, any person or entity that does not deny liability for a civil penalty assessed by the Department of Crime Control and Public Safety pursuant to this Article shall make payment within 30 calendar days of the date the penalty is assessed. Payment shall be made to the Department of Transportation, Fiscal Section. A penalty payable pursuant to this section that remains unpaid for more than 30 days following the date of assessment shall be delinquent and shall be subject to the maximum allowable late penalties and interest as a past-due account pursuant to G.S. 147-86.23.

(b) Any person or entity who denies liability for a penalty imposed by the Department of Crime Control and Public Safety under this Article may pay the penalty under protest and request an informal review by the Secretary of the Department of Crime Control and Public Safety or his designee. For penalties of one thousand five hundred dollars ($1,500) or less that are paid under protest, the penalty must be paid in full prior to the informal review. For penalties greater than one thousand five hundred dollars ($1,500) that are paid under protest, one thousand five hundred dollars ($1,500) must be paid prior to the informal review. A request for informal review must be made within 30 days of the assessment of a civil penalty, must be made in writing, must certify that payment has been paid to the Department of Transportation, Fiscal Section, and must contain sufficient information for the Secretary of Crime Control and Public Safety to determine the specific basis upon which liability is being challenged.

(c) Upon receiving a request for informal review, the Secretary of Crime Control and Public Safety, or his designee, shall review the record and determine whether the civil penalty was assessed in error. If, after reviewing the record, the Secretary, or his designee, determines that the assessment was issued in error, the penalty, or the appropriate amount thereof, shall be refunded. If, after reviewing the record, the Secretary, or his designee, determines that the assessment was not issued in error, any amount of the penalty that remains unpaid must be paid within 30 days of the notice of decision.

(d) Any person or entity who is dissatisfied with the decision of the Secretary of Crime Control and Public Safety pursuant to subsection (c) of this section may, within 60 days of the decision, bring an action for refund of the penalty against the Department of Crime Control and Public Safety in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed."

SECTION 3. G.S. 20-101(b) reads as rewritten:

"(b) A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight rating of more than 10,000 ~~pounds, but less than 26,001 pounds,~~pounds and is used in intrastate commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12), shall have the name of the owner printed on ~~the~~ each side of the vehicle in letters not less than three inches in height."

SECTION 4. G.S. 20-117 reads as rewritten:

"**§ 20-117. Flag or light at end of load.**

(a) General Provisions. – Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than ~~12~~ 18 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

(b) Commercial Motor Vehicles. – Notwithstanding the provisions of subsection (a) of this section, a commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. 393."

SECTION 5. G.S. 20-122.1 reads as rewritten:

"**§ 20-122.1. Motor vehicles to be equipped with safe tires.**

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty- seconds tread depth requirements of this section shall not apply to dual wheel trailers. ~~Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels.~~ For the purpose of this section, the following definitions shall apply:

(1) "Chunking" – separation of the tread from the carcass in particles which may range from very small size to several square inches in area.
(2) "Cord" – strands forming a ply in a tire.
(3) "Tread" – portion of tire which comes in contact with road.
(4) "Tread depth" – the distance from the base of the tread design to the top of the tread.

(a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is operated on the streets or highways of this State shall be equipped with tires that are safe for the operation of the vehicle and do not expose the public to needless hazard. Tires shall be

considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord, or there is a visible tread separation or chunking, or if the steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove, or if any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove, or if the tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se."

SECTION 6. G.S. 20-118(e)(3) reads as rewritten:

"(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3)of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision ~~(b)(3),~~(b)(3) of this section, or by a special permit issued pursuant to G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars ($10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

SECTION 7. G.S. 20-119(d) reads as rewritten:

"(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of Crime Control and Public Safety ~~may~~ shall assess a civil penalty for each violation against the registered owner of the vehicle as follows:

(1) A fine of one thousand five hundred dollars ($1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.

~~(1)~~(1a) A fine of five hundred dollars ($500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit.~~permit, or failing to comply with the number of properly certified escort vehicles required.~~

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house

trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision ~~(1)~~ (1), (1a), or (2) of this subsection. ~~In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty-five thousand dollars ($25,000).~~"

SECTION 8. G.S. 20-119 is amended by adding a new subsection to read:

"(d1) In addition to the penalties assessed pursuant to subsection (d) of this section, the Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten thousand dollars ($10,000), in accordance with G.S. 20-118(e)(1) and (3) against the registered owner of the vehicle for any of the following:

(1) Operating without the issuance of a required permit.

(2) Operating off permitted route of travel.

(3) Failing to comply with travel restrictions of the permit.

(4) Operating without the proper vehicle registration or license for the class of vehicle being operated.

A violation of this subsection constitutes operating a vehicle without a special permit."

SECTION 9. G.S. 20-381(a)(2a) reads as rewritten:

"(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety ~~finds~~ finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown ~~unsafe for use~~ in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, ~~to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous,~~ the agent shall declare the vehicle "Out-of-Service." The agent shall~~may~~ require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out-of-Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out-of-Service" until all repairs required by the "Out-of-Service" notice have been satisfactorily completed. ~~in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect.~~ Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier

subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes."

SECTION 10. G.S. 20-124(e1) reads as rewritten:

"(e1) Every motor truck and ~~tractor-truck~~truck-tractor with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front ~~wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes.~~wheels if it was manufactured prior to July 25, 1980. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124(e)."

SECTION 11. G.S. 20-124(g) reads as rewritten:

"(g) The provisions of this section shall not apply to any trailer ~~or semitrailer~~ when used by a farmer, his tenant, agent, or employee under such circumstances that such trailer ~~or semitrailer~~ is exempt from registration by the provisions of G.S. 20-51. This exemption does not apply to trailers that are equipped with brakes from the manufacturer and that are manufactured after October 1, 2009."

SECTION 12. G.S. 20-125.1(d) reads as rewritten:

"(d) Nothing in this section shall apply to ~~motorcycles.~~motorcycles unless the motorcycle was equipped with electrical or mechanical directional signals from the manufacturer."

SECTION 13. G.S. 20-135.2A(c)(8) reads as rewritten:

"(8) A ~~driver or~~ passenger of a residential garbage or recycling truck while the truck is operating during collection ~~rounds, and while traveling to and from garbage and recycling material loading and unloading locations.~~rounds.

SECTION 14. G.S. 20-136.1 reads as rewritten:

"**§ 20-136.1. Location of ~~television viewers.~~television, computer, or video disc players, monitors, and screens.**

No person shall drive any motor vehicle upon a public street or highway or public vehicular area, ~~equipped with any television viewer, screen, or other means of visually receiving a television broadcast~~while operating, using, or viewing any television, computer, or video disc player which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; equipment that displays audio system information, functions or controls, or weather, traffic, and safety information; vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties."

SECTION 15. G.S. 20-185(a) reads as rewritten:

"(a) The State Highway Patrol shall consist of a commanding officer, who shall be appointed by the Governor and whose rank shall be designated by the Governor, and such additional subordinate officers and members as the Secretary of Crime Control and Public Safety, with the approval of the Governor, shall direct. Members of the State Highway Patrol shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the pleasure of the Governor and Secretary. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Department of Administration. Notwithstanding any other provision of this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to ~~twenty-one percent (21%)~~twenty-three percent (23%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions."

SECTION 16. G.S. 20-382.2(d) reads as rewritten:

"(d) Proceeds. – A penalty imposed under this section is payable to the Department of Crime Control and Public Safety. ~~Penalties collected under this section shall be credited to the Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 17. G.S. 146-30 is amended by adding a new subsection to read:

"(b2) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands purchased and owned by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these dispositions shall be deposited into an account created in the Department of Crime Control and Public Safety to be used only for the purpose of constructing, maintaining, or supporting the VIPER network."

SECTION 18. Sections 1, 6, 15, 16, and 17 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to offenses committed on or after that date.

SENATE BILL 368:
Various Changes in Motor Vehicle Law.-AB

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 21, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S368-CSSU-7		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 368 makes the following changes to North Carolina motor vehicle laws:***

- ***Amends eligibility requirements for issuance of a Retired Highway Patrol special plate.***
- ***Reinstates a mandatory informal review process for those who deny liability for civil penalties assesses by the Department of Crime Control and Public Safety.***
- ***Requires all vehicles used in intrastate commerce that are over 10,000 lbs to be marked with the name of the owner (currently applies only to vehicles between 10,000 – 26,001 lbs)***
- ***Requires a larger flag on the end of a load that extends more than 4 ft beyond the rear of a vehicle.***
- ***Amends safe tire provisions to comply with federal requirements.***
- ***Amends penalties for oversize/overweight vehicles.***
- ***Requires the Department of Crime Control and Public Safety to declare unsafe vehicles "Out-of-Service" until required repairs have been completed.***
- ***Eliminates/narrows exemptions from brake requirements.***
- ***Requires motorcycles to have directional signals if equipped with them by the manufacturer.***
- ***Amends seat belt exemption for drivers and passengers in garbage and recycling trucks.***
- ***Prohibits drivers from operating or viewing computers or DVD players in the front of the vehicle.***
- ***Increases the cap on the maximum percentage of supervisory personnel in the State Highway Patrol from 21% to 23%.***
- ***Requires all proceeds from the lease of property owned by the State Highway Patrol as part of the VIPER project to be used to support the project.***

BILL ANALYSIS: The PCS for Senate Bill 368 makes the following changes to the law, as requested by the State Highway Patrol:

Retired State Highway Patrol special license plate. Currently, the surviving spouse of a person who is deceased and retired from the State Highway Patrol would have to apply for a plate within 90 days of the qualifying spouse's death. The PCS eliminates the time requirement, and requires an applicant for the plate to present a copy of the retiree's identification card or letter of retirement.

Informal review process to protest civil penalties. The PCS reinstates a mandatory informal review process for civil penalties assessed by the Department of Crime Control and Public Safety. The

Department used an informal process prior to 2008, when the provision in Chapter 20 authorizing the process was repealed. The informal process requires that payment of the penalty be made within 30 days of it being assessed, even if the person denies liability for the penalty. However, if the penalty is more than $1,500, then only the first $1,500 would have to be paid prior to the informal review.

All vehicles over 10,000 lbs. in intrastate commerce to be marked. Current law requires a motor vehicle weighing between 10,000 lbs. and 26,001 lbs. that is used in intrastate commerce to be marked on the side with the name of the owner. The PCS requires that vehicles 26,001 lbs. and greater be marked as well.

Flags at the end of a load. When a load on a vehicle extends more than 4 feet beyond the rear of the bed or body of the vehicle, the law requires that a red or orange flag not less than 12 inches in length and width be displayed at the end of the load during daylight hours. The PCS increases the flag size required from 12 inches to 18 inches in length and width.

Safe tires. The PCS amends safe tire specifications for vehicles with a gross vehicle weight rating of 10,001 lbs. or more in order to comply with federal requirements.

Oversize/overweight penalties. The PCS authorizes overweight penalties only to the extent the actual weight exceeds what is allowed in the permit (currently, the penalty would be applied as if the operator did not have a permit). It also requires the Department to assess penalties for violating special permit conditions, decreases the maximum penalty from $25,000 to $10,000, and makes it a flat $1500 penalty for operating without the proper number of escorts.

"Out-of-Service" vehicles. The Department of Crime Control and Public Safety has the authority to prohibit a motor carrier from operating a vehicle that is unsafe for use. Under the current law, it is the duty of an agent to guide the vehicle to a location to correct the defect if the vehicle is in operative condition and movement is not dangerous. The PCS would require the agent to declare the vehicle "Out-of-Service" if its condition is likely to cause a crash or breakdown and prohibits anyone from operating the vehicle until all required repairs have been completed.

Brake exemptions. G.S. 20-124 generally requires all motor vehicles operated on the highways to be equipped with brakes adequate to control the movement of the vehicle. The PCS eliminates or narrows exemptions from brake requirements as follows:

- Truck-tractors with semitrailers attached and three or more axles – brakes not required on front wheels *only if manufactured prior to July 2, 1980.*
- Eliminates exemption for semitrailers when used by farmers.
- Trailers used by farmers – brakes not required *only if not equipped with brakes from manufacturer prior to October 1, 2009.*

Directional signals on motorcycles. Currently, motorcycles are exempt from the requirement that vehicles be equipped with directional signals. The PCS would continue to exempt them only if they are not equipped with directional signals by the manufacturer.

Seat belt exemption for garbage trucks. G.S. 20-135.2A generally requires occupants in motor vehicles to have a seatbelt properly fastened when the vehicle is in forward motion on a street or highway. There is currently an exemption from the requirement for drivers or passengers in residential garbage or recycling trucks while on collection rounds and going to and from loading and unloading locations. The PCS would eliminate the exemption for the driver and for trips to and from loading and unloading locations, so the exemption would apply only to passengers during rounds.

Prohibit computer or DVD players in front seat of vehicles. Current law prohibits television viewers or screens in the front seat of motor vehicles. The PCS amends the provision to prohibit operating, using, or viewing a computer or video disc player while driving on a highway or public vehicular area.

Increase cap on supervisory personnel in the State Highway Patrol. Current law caps the maximum number of supervisory personnel in the State Highway Patrol at 21% of the personnel serving as uniformed highway patrolmen. The PCS would increase the cap to 23%.

Proceeds from lease to support VIPER project. G.S. 146-30 requires that, when land owned by the State is sold or leased, a service charge must be paid into the State Land Fund. The PCS would amend that provision to allow the Highway Patrol to lease space on a tower owned as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project and have all of the proceeds deposited into an account to be used to support the VIPER network and not pay the service charge to the State Land Fund.

EFFECTIVE DATE: Sections 1, 6, 15, 16, and 17 of the bill are effective when they become law. The remainder of the bill becomes effective October 1, 2009, and applies to offenses committed on or after that date.

S368-SMSU-32(CSSU-7) v6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 458
PROPOSED COMMITTEE SUBSTITUTE S458-CSRC-10 [v.2]

4/20/2009 6:50:33 PM

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."

SECTION 3. This act is effective when it becomes law. Section 1 applies to applicants for licensure on or after that date.

SENATE BILL 458:
Require H. S. Diploma/GED/Bail Bondsman

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S458-CSRC-10		

SUMMARY: ***Senate Bill 458 would require 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 may 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.***

The PCS combines the high school diploma provisions of S458 with the provisions of S789 (No Bail Bondsman License/Mis. Drug Offenses.

The act is effective when it becomes law. The diploma requirement would apply to individuals applying for a license on or after that date.

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 provides that the Commissioner of Insurance may deny, suspend, revoke or refuse to renew any license for any of the following causes:

(1) A conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner.
(2) Material misstatement, misrepresentation or fraud in obtaining the license.
(3) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
(4) Fraudulent or dishonest practices in the conduct of business under the license.
(5) Conviction of a crime involving moral turpitude.
(6) Failure to comply with or violation of the provisions of this Article or of any order, rule or regulation of the Commissioner.
(7) 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.

(8) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
(9) 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.
(10) For requiring, as a condition of executing a bail bond, that the principal agree to engage the services of a specified attorney.
(11) For cheating on an examination for a license under this Article.
(12) 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.
(13) For knowingly aiding or abetting others to evade or violate the provisions of this Article.
(14) 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.
(15) Conviction of a felony.

S458-SMRC-13(CSRC-10) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 458

Short Title:	Require H. S. Diploma/GED/Bail Bondsman.	(Public)
Sponsors:	Senator Swindell.	
Referred to:	Commerce.	

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.

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. This act is effective when it becomes law and applies to applicants for licensure on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 789

Short Title:	No Bail Bondsman License/Mis. Drug Conviction.	(Public)
Sponsors:	Senators Swindell, Jones; Berger of Franklin, Brown, Brunstetter, East, Forrester, Goss, and Stevens.	
Referred to:	Commerce.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON FROM BEING LICENSED AS A BAIL BONDSMAN IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-80(b) reads as rewritten:

"(b) The Commissioner shall deny, revoke, or refuse to renew any license under this Article if the applicant or licensee is or has ever been convicted ~~of a felony.~~of (i) a felony or (ii) a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes."

SECTION 2. This act is effective when it becomes law and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 647
PROPOSED COMMITTEE SUBSTITUTE S647-CSRO-14 [v.1]

4/20/2009 4:43:24 PM

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.

SENATE BILL 647:
Amend CPA Laws/Practice Privileges

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S647-CSRO-14		Committee Counsel

SUMMARY: ***Senate Bill 647 amends the law relating to certified public accountant to allow a public account certified or licensed in another state to practice in this State under certain circumstances.***

The Proposed Committee Substitute adds a new section to the bill to authorize the Board of Certified Public Accountant Examiners to adopt rules of professional conduct and to discipline persons exercising the out-of-state practice privilege.

[As introduced, this bill was identical to H911, as introduced by Rep. Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary III, if favorable, Finance.]

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 State 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 adds language to authorize the Board to adopt rules of professional conduct and to 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-SMRO-34(CSRO-14) v1

SENATE BILL 761

Short Title:	Street Construction/Developer Responsibility.	(Public)
Sponsors:	Senators Brown; Berger of Rockingham, Blake, Brock, East, Hoyle, Hunt, Jacumin, Jenkins, Preston, Swindell, and Tillman.	
Referred to:	Commerce.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RESPONSIBILITY OF DEVELOPERS FOR THE COST OF STREET OR HIGHWAY CONSTRUCTION TO THE AMOUNT NECESSARY TO SERVE PROJECTED TRAFFIC GENERATED BY THE DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The

ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 2. G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the

immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the

occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 3. G.S. 136-18(29) reads as rewritten:

"(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage ~~lanes and medians~~lanes, traffic control devices, medians, channelization, and other improvements by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day, ~~or more.~~including the traffic generated by the proposed development. The minimum traffic volume condition for secondary road routes does not apply for improvements required to preserve the safe operations of the street or highway."

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

SENATE BILL 761:
Street Construction/Developer Responsibility

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 21, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 761 would limit the responsibility of developers for the cost of constructing required acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements on streets and highways to the amount necessary to serve traffic generated or redirected by the development.***

CURRENT LAW: Cities and counties are currently authorized to adopt subdivision control ordinances to provide for orderly growth and development, including the coordination of transportation networks within proposed subdivisions with existing or planned streets and highways. In lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development.

The Department of Transportation is currently authorized to establish policies and rules related to the construction of driveway connections onto streets and highways. The Department can require the construction of acceleration and deceleration lanes and other improvements for connections onto secondary road routes with an average daily traffic volume of 4,000 vehicles a day or more.

BILL ANALYSIS: Senate Bill 761 would amend the current law to provide that a city or county subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements must be limited to the amount necessary to serve projected traffic generated or redirected by the proposed development.

The bill would also authorize the Department to require construction of improvements for driveway connections onto secondary road routes without regard to traffic volume if they are required to preserve the safe operations of the street or highway.

EFFECTIVE DATE: The act would be effective when it becomes law.

S761-SMSU-42(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 780
PROPOSED COMMITTEE SUBSTITUTE S780-CSRC-11 [v.1]

4/20/2009 7:45:15 PM

Short Title: Struc. Settlement Annuities/Ins. Guar. Assn. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND COVERAGE UNDER THE INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO STRUCTURED SETTLEMENT ANNUITIES FOR MATTERS INVOLVING PERSONAL INJURY OR ILLNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-16 is amended by adding a new subdivision to read:

"(17a) 'Structured settlement annuities' means any contracts or certificates for annuities issued to fund, in whole or in part, a settlement agreement for a matter involving personal injury or illness, including any settlement agreement permitted under Chapter 97 of the General Statutes."

SECTION 2. G.S. 58-62-21(a) reads as rewritten:

"**§ 58-62-21. Coverage and limitations.**

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

(1) To persons other than persons specified in subdivisions (3) and (4) of this subsection who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this ~~subsection, and~~ subsection;

(2) To persons other than persons specified in subdivisions (3) and (4) of this subsection who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the ~~associations.~~associations;

(3) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside; and

(4) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are not residents of this State, but only if all of the following conditions are met:

a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article; and

b. Neither the payees (or beneficiaries of payees if the payees are deceased) nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside."

SECTION 3. This act is effective when it becomes law and applies to claims submitted to the Insurance Guaranty Association on or after that date.

SENATE BILL 780:
Struc. Settlement Annuities/Ins. Guar. Assn

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S780-CSRC-11		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 780 would expand the protection against defaulting insurers under the Life and Health Insurance Guaranty Association Act to include North Carolina residents who settle claims for personal injury or illness under an agreement funded at least in part by an annuity, regardless of whether the owner of the annuity contract is a State resident.***

The PCS would also extend protection to non-residents who settle their claims for personal injury or illness under agreements funded by annuities, if the following conditions are met:

> ***1) no coverage is offered by the insurance guaranty association of the state in which the payee or the contract owner reside, and***
>
> ***2) the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association.***

[As introduced, this bill was identical to H889, as introduced by Reps. Haire, Love, Blue, Faison, which is currently in House Judiciary III.]

CURRENT LAW: The Life and Health Insurance Guaranty Association Act, codified as Article 62 of Chapter 58 of the General Statutes, provides protection to eligible persons against defaults by issuers of certain life and health insurance policies and annuity contracts, by creating an association of insurers responsible for fulfill the obligations of the defaulting insurer, subject to certain limitations.

Currently, the Act protects owners of annuity contracts issued to fund structured settlement agreements who reside in this State at the time when the issuing insurer is determined to be delinquent. If the contract owner is a non-resident, coverage is provided only if:

- the issuing insurer is domiciled in North Carolina and never held a license in the state where the contract owner resides, and
- the state where the contract owner resides has an association similar to North Carolina's Life and Health Insurance Guaranty Association but the contract owner is not eligible for coverage by that association.

G.S. 58-62-21(b)(2).

Currently, the Act limits its coverage to the lesser of the amount due under the annuity issued by the defaulting insurer or $300,000.00 with respect to any one individual.

BILL ANALYSIS: Under a structured settlement, the funding annuity is issued to someone other than the person whose claim is being settled. Under current law, if a North Carolina resident settles a personal injury or workers compensation claim by means of a structured settlement, and if the entity to whom the funding annuity is issued is not a resident of North Carolina, the Act does not provide coverage in the event that the annuity issuer becomes unable to meet its contractual obligations.

The PCS would provide coverage to payees under annuities issued to fund structured settlements regardless of whether the owner of the annuity contract is a resident of this State, where the payee is a resident of North Carolina at the time the issuer of the annuity is determined to be unable to meet its contractual obligations.

If the payee under a structured settlement annuity is not a resident of this State at the time the annuity issuer is determined to be unable to meet its contractual obligations, the PCS would provide coverage only if both of the following conditions are met:

- the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association; and
- no coverage is offered by the insurance guaranty association of the state(s) in which the payee or the contract owner reside

By expanding the class of covered persons to include annuity payees who do not own the annuity contracts, the $300,000.00 limit under this section would apply to such individuals.

EFFECTIVE DATE: This act is effective when it becomes law and would apply to claims submitted to the Insurance Guaranty Association on or after that date.

S780-SMRC-15(CSRC-11) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 782

Short Title:	Repeal Pistol/Crossbow Transfer Permit.	(Public)
Sponsors:	Senators Berger of Franklin; Allran, Apodaca, Berger of Rockingham, Bingham, Brock, Clary, Davis, East, Goss, Hoyle, Hunt, Preston, Rouzer, and Tillman.	
Referred to:	Commerce.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATE LAW THAT REQUIRES A PERSON TO OBTAIN A LICENSE OR PERMIT TO PURCHASE, SELL, RECEIVE, OR OTHERWISE TRANSFER A PISTOL OR CROSSBOW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402 is repealed.

SECTION 2. G.S. 14-403 is repealed.

SECTION 3. G.S. 14-404 is repealed.

SECTION 4. G.S. 14-405 is repealed.

SECTION 5. G.S. 14-406 is repealed.

SECTION 6. G.S. 14-407.1 is repealed.

SECTION 7. G.S. 14-408 is repealed.

SECTION 8. This act becomes effective October 1, 2009.

SENATE BILL 782:
Repeal Pistol/Crossbow Transfer Permit

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Steven Rose
Analysis of:	First Edition		Committee Counsel

SUMMARY: SB 782 repeals the requirement that a permit must be obtained from the county sheriff in order for any person to purchase or receive a pistol or crossbow. A person who holds a valid North Carolina concealed handgun permit is not required to obtain a separate pistol or crossbow permit.

[As introduced, this bill was identical to H892, as introduced by Reps. Hilton, Jones, Cleveland, which is currently in House Judiciary II, if favorable, Finance.]

CURRENT LAW: Article 52A of Chapter 14 of the General Statutes provides that in order for any person to sell, give away or transfer, or to purchase or receive a pistol or crossbow in the State, the purchaser or receiver must obtain a permit from the sheriff of the county where they reside, or posses a valid North Carolina concealed handgun permit. Purchase or receipt permits are good for five years.

The sheriff must conduct a criminal history background check using the National Instant Criminal Background Check System (NICS) and the Administrative Office of the Courts, in order to determine the person is not prohibited from owning or possessing a handgun under State or federal law. A previous conviction for a felony would disqualify a person.

Other disqualifiers include being mentally incompetent, a fugitive from justice, an unlawful drug user, being under a domestic violence order. All these don't necessarily show up in a NICS check.

The sheriff must be satisfied as to the good moral character of the applicant by affidavits, oral evidence or otherwise, and that the person desires the weapon for (i) protection of home, business, person, family or property; (ii) target shooting; (iii) collecting; or (iv) hunting.

Violation is a Class 2 misdemeanor (no priors, 1-30 days community punishment).

Under federal law, a person with a North Carolina permit to obtain a handgun, or a North Carolina concealed handgun permit, purchasing a handgun from a federally licensed gun dealer, does not have to be checked by the dealer using NICS. 18 USC 922t(3).

BILL ANALYSIS: SB 782 repeals all requirements for a State permit issued by the county sheriff for purchase or receipt of a pistol or crossbow. Persons purchasing handgun from a federally licensed handgun dealer would be checked by the dealer using the NICS check system only. However, persons obtaining a handgun through private transactions, such as at a gun show or from any other private party, would no longer be checked in any way. Crossbow purchasers would no longer be checked.

EFFECTIVE DATE: The act becomes effective October 1, 2009.

BACKGROUND: The original act requiring a permit to obtain a pistol was enacted by the General Assembly on March 10, 1919.

§ 14-402. Sale of certain weapons without permit forbidden.

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or

receiver resides; or (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol or crossbow without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this section:

(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.

§ 14-403. Permit issued by sheriff; form of permit; expiration of permit.

The sheriffs of any and all counties of this State shall issue to any person, firm, or corporation in any county a license or permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the weapon. The license or permit shall expire five years from the date of issuance. The license or permit shall be in the following form:

North Carolina,

_____ County.

I, _____, Sheriff of said County, do hereby certify that I have conducted a criminal background check of the applicant, _____ whose place of residence is _____ in _____ (or) in _____ Township, _____ County, North Carolina, and have received no information to indicate that it would be a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The applicant has further satisfied me as to his, her (or) their good moral character. Therefore, a license or permit is issued to _____ to purchase one pistol from any person, firm or corporation authorized to dispose of the same.

This license or permit expires five years from its date of issuance.

This ____ day of _____, _____.

_____

Sheriff.

§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.

(a) Upon application, the sheriff shall issue the license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

(1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.

(2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

(b) If the sheriff is not fully satisfied, the sheriff may, for good cause shown, decline to issue the license or permit and shall provide to the applicant within seven days of the refusal a written statement of the reason(s) for the refusal. An appeal from the refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final.

(c) A permit may not be issued to the following persons:

(1) One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and who is later pardoned may obtain a permit, if the purchase or receipt of a pistol or crossbow permitted in this Article does not violate a condition of the pardon.

(2) One who is a fugitive from justice.

(3) One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section 802).

(4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.

(5) One who is an alien illegally or unlawfully in the United States.

(6) One who has been discharged from the armed forces under dishonorable conditions.

(7) One who, having been a citizen of the United States, has renounced his or her citizenship.

(8) One who is subject to a court order that:

a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

(d) Nothing in this Article shall apply to officers authorized by law to carry firearms if the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and state that the purpose for the purchase of the firearms is directly related to the law officers' official duties.

(e) The sheriff shall charge for the sheriff's services upon issuing the license or permit a fee of five dollars ($5.00).

(f) Each applicant for a license or permit shall be informed by the sheriff within 30 days of the date of the application whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.

(g) An applicant shall not be ineligible to receive a permit under subsection [subdivision] (4) of subsection (c) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1.

S782-SMRL-39(e1) v1

SENATE COMMERCE COMMITTEE
Tuesday, April 28, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m., Tuesday, April 28, 2009, in Room 1027 of the Legislative Building. Senator R.C. Soles presided. Twenty-four members of the committee were present.

S.B. 761 – Street Construction/Developer Responsibility.

Senator Brown was recognized to explain the bill. Senator Rand moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS limits the responsibility of developers for the cost of street or highway construction to the amount necessary to serve projected traffic generated by the development. Johanna Reese, the Department of Transportation's legislation liaison, was recognized to state that DOT did not oppose the bill. Kevin Lacy, DOT engineer, was recognized to answer questions. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 660 – Auto Insurance/Diminution in Value.

Senator Rucho was recognized to explain the bill and moved for the adoption of the PCS for discussion. The motion carried. The PCS provides an alternative method of determining property damages as part of motor vehicle liability insurance. Jennifer Cohen, Executive Director of the Insurance Federation of NC, was recognized to speak in opposition to the bill. Senator Rucho requested that the bill be removed from the current agenda to be heard at a later date. A copy of the PCS and the summary is attached.

S.B. 68 – No ABC Establishments W/I 1,000 Ft of School.

Senator Dorsett was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS prohibits the location of a new ABC licensed establishment within 1,000 feet of a church, public school, or a nonpublic school as defined in Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes. Nora Carr, Guilford County Schools' Chief of Staff and The Reverend Mark Creech of the Christian Action League spoke in favor of the bill. Senator Dorsett offered an amendment to make the bill a local bill and moved for its adoption. The motion carried. Staff alerted committee members that Senate rules might not allow the bill to be converted from a public to a local bill and then reported out of the committee. Committee members had a differing opinion. Senator Dorsett moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 988 – Spirituous Liquor Tasting at ABC Stores.

Senator Graham was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS allows spirituous liquor tasting at local ABC stores. David Warner, Vice President of the Distilled Spirits Council, was recognized to answer questions and

speak in favor of the bill. The Reverend Mark Creech was recognized to speak in opposition to the bill. Senator Graham moved for a favorable report and the motion failed. A copy of the PCS and the summary is attached.

S.B. 780 – Struc. Settlement Annuities/Ins. Guar.

Senator Berger of Franklin was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS expands coverage under the Insurance Guaranty Association with respect to structured settlement annuities for matters involving personal injury or illness. Senator Berger moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 12:02 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 19, 2009

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

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

S.B. **642** Require Off-Road Vehicles to Be Registered.

Draft Number:	35336
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1073** Amend Alarm Systems Licensing Act.

Draft Number:	75263
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, April 28, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 428	Stay on Homeowners Insurance Actions.	Sen. Boseman
SB 820	Create New Titling Categories.	Sen. Hartsell
SB 476	Create Titling Categories-Replica/Street Rod.	Sen. East
SB 68	No ABC Establishments W/I 1,000 Ft. of Sch.	Sen. Dorsett
SB 988	Spirituous Liquor Tasting at ABC Stores.	Sen. Graham
SB 761	Street Construction/Developer Responsibility.	Sen. Brown
SB 43	Require Boating Safety Education.	Sen. Jones
SB 654	Create Exemption/Size-Weight for Sage Haulers.	Sen. Jones
SB 656	Remove Controlled Access Highway Restriction.	Sen. Jones
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 686	Electronic Reporting of Abandoned Property.	Sen. Foriest
SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Sen. Berger
SB 981	Mortgage Guaranty Insurance Revisions.	Sen. Jenkins

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 761
PROPOSED COMMITTEE SUBSTITUTE S761-CSSU-26 [v.1]

4/27/2009 11:04:24 AM

Short Title: Street Construction/Developer Responsibility. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RESPONSIBILITY OF DEVELOPERS FOR THE COST OF STREET OR HIGHWAY CONSTRUCTION TO THE AMOUNT NECESSARY TO SERVE PROJECTED TRAFFIC GENERATED BY THE DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula

adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 2. G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within

proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 3. G.S. 136-18(29) reads as rewritten:

"(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage ~~lanes and medians~~lanes, traffic control devices, medians, channelization, and other improvements by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day, or ~~more.~~more, including the traffic generated by the proposed development. The minimum traffic volume condition for secondary road routes does not apply for improvements required to preserve the safe operations of the street or highway."

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

SENATE BILL 761:
Street Construction/Developer Responsibility

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S761-CSSU-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 761 would limit the responsibility of developers for the cost of constructing required acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements on streets and highways to the amount necessary to serve traffic generated or redirected by the development.***

CURRENT LAW: Cities and counties are currently authorized to adopt subdivision control ordinances to provide for orderly growth and development, including the coordination of transportation networks within proposed subdivisions with existing or planned streets and highways. A developer may be required to provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development.

The Department of Transportation is currently authorized to establish policies and rules related to the construction of driveway connections onto streets and highways. The Department can require the construction of acceleration and deceleration lanes, traffic storage lanes and medians by others for connections onto secondary road routes with an average daily traffic volume of 4,000 vehicles a day or more.

BILL ANALYSIS: The PCS for Senate Bill 761 would amend the current law to provide that a city or county subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements must be limited to the amount necessary to serve projected traffic generated or redirected by the proposed development. Alternatively, the ordinance may allow for the city or county to enter into an agreement with the developer to reimburse the developer for up to 100% of its cost in the future if the developer pays for the improvement upfront and others benefit from the improvement.

The PCS would also authorize the Department to require construction of improvements for driveway connections onto secondary road routes with an average daily traffic volume of 4,000 vehicles a day or more, including traffic generated by the proposed development, and without regard to traffic volume if they are required to preserve the safe operations of the street or highway.

EFFECTIVE DATE: The act would be effective when it becomes law.

S761-SMSU-45(CSSU-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 660
PROPOSED HOUSE COMMITTEE SUBSTITUTE S660-CSRG-11 [v.3]

4/27/2009 4:57:21 PM

Short Title: Auto Insurance/Diminution in Value. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF DETERMINING PROPERTY DAMAGES AS A PART OF MOTOR VEHICLE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 is amended by adding a new subsection to read:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

...

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For such claims, the policy shall provide that if a claimant asserts a claim for property damage to a motor vehicle and if the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident, on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered select the umpire. The appraisers shall then submit their differences to the umpire. The umpire shall then prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers, or the report of the umpire, when filed with the insurer shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. If the report is rejected, the report shall not be admissible as evidence in any subsequent proceeding. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a motor damage appraiser licensed by the Department of Insurance.

...."

SECTION 2. G.S. 7A-292 is amended by adding a new subdivision to read:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

...

(15) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1)."

SECTION 3. This act becomes effective January 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

SENATE BILL 660:
Auto Insurance/Diminution in Value

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Rucho	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S660-CSRG-11		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 660 amends G.S. 20-279.21 by adding a new subsection to provide a procedure for determining the amount of damage to a motor vehicle resulting from the difference in fair market value of the vehicle immediately before and immediately after an accident. This subsection only applies when liability for coverage is not in dispute.***

This procedure would typically be used for third party claims by a driver who was not at fault against the insurer of a driver who was liable for damages resulting from an accident. As stated above, the procedure would be used only when liability for coverage for the claim is not in dispute.

[As introduced, this bill was identical to H893, as introduced by Reps. Justice, Grady, which is currently in House Judiciary III, if favorable, Insurance.]

CURRENT LAW: 11 NCAC 4.0421 provides that "if a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle."

BILL ANALYSIS: Section 1 of the bill amends G.S. 20-279.21, *"Motor vehicle liability policy" defined*, to provide an alternative method for determining motor vehicle property damage when coverage for the claim is not in dispute.

Specifically, the bill provides that, if the parties fail to agree as to the difference in fair market value of the vehicle immediately before and immediately after the accident, on the written demand of the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other party of the appraiser within 20 days of the written demand. The appraisers may then appraise the loss. If the appraisers fail to agree, the appraisers shall select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree on an umpire within 15 days, the claimant or the insurer may request a magistrate in the county where the vehicle is registered to select the umpire. The appraisers must then submit their differences to the umpire and the umpire shall file a report determining the amount of the loss. The umpire may not award damages that are higher or lower than the determinations of the appraisers. The umpire may not make a determination as to the liability or the existence of coverage.

Either party has 15 days to reject the report. If the report is not rejected, it shall be binding upon the parties. If rejected, the report is not admissible as evidence in any subsequent proceeding.

Each appraiser shall be paid by the party selecting the appraiser. The expenses of appraisal and the umpire shall be paid equally by the parties.

Section 2 gives a magistrate the power to appoint an umpire as provided in Section 1 of the Proposed Committee Substitute.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 660 becomes effective January 1, 2010 and applies to policies issued or renewed on or after that date.

BACKGROUND: G.S. 20-71.4(a) provides that it is Class 2 misdemeanor to "transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle."

S660-SMRG-19(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 68
PROPOSED COMMITTEE SUBSTITUTE S68-CSRO-19 [v.2]

4/27/2009 2:28:17 PM

Short Title: No ABC Establishments W/I 1,000 Ft. of Sch. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE LOCATION OF A NEW ABC LICENSED ESTABLISHMENT WITHIN 1,000 FEET OF A CHURCH, PUBLIC SCHOOL, OR A NONPUBLIC SCHOOL AS DEFINED IN PART 1 OR PART 2 OF ARTICLE 39 OF CHAPTER 115C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected;

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the ~~question.~~question; and

(3) Whether the proposed ABC store is located within 1,000 feet of a church, public school, or any nonpublic school under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes."

SECTION 2. This act becomes effective December 1, 2009, and applies to proposed ABC permits submitted to the Commission for approval on or after that date.

SENATE BILL 68:
No ABC Establishments W/I 1,000 Ft. of Sch

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S68-CSRO-19		Committee Counsel

SUMMARY: Senate Bill 68 would prohibit a new ABC store from being located within 1,000 feet of a church, public school, or nonpublic school.

The bill would become effective December 1, 2009, and apply to proposed ABC permits submitted to the Commission for approval on or after that date.

CURRENT LAW:

Under 18B-801, a local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the ABC Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely affected; and

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

Under rules adopted by the ABC Commission, the opening of a new ABC store will not be approved by the Commission unless at least 30 days notice is given to the Chair of the Commission as to the intended location of the store, and until a public notice has been posted at the intended location for at least 30 days. The Commission will consider objections to the opening of a new ABC store upon a showing that the local board has either considered and overruled or ignored the objections. The rules provide that new stores should not be opened in any area which is principally residential, in unreasonable proximity to any church, school or similar institution, in any slum district or other similarly undesirable area or at any location where there is not sufficient parking to avoid traffic congestion.

BILL ANALYSIS:

Senate Bill 68 would amend the law to authorize a local board to consider whether a proposed ABC store is located within 1,000 feet of a church or school, before choosing the location of the store. This bill would codify part of the restriction contained in the ABC Commission's rule.

The ABC Commission would still have final authority to determine the suitability of the location.

EFFECTIVE DATE:

This act becomes effective December 1, 2009, and applies to proposed ABC permits submitted to the Commission for approval on or after that date.

S68-SMRO-39(CSRO-19) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 988
PROPOSED COMMITTEE SUBSTITUTE S988-CSRO-20 [v.3]

4/27/2009 5:47:24 PM

Short Title: Spirituous Liquor Tasting at ABC Stores. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW SPIRITUOUS LIQUOR TASTING AT LOCAL ABC STORES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1120. Spirituous liquor tasting at ABC stores.**

Notwithstanding G.S. 18B-301(f)(1), the holder of any commercial permit issued under G.S. 18B-1100, a distiller broker representative permit, or a distiller representative permit may conduct a consumer tasting event at an ABC store subject to the following conditions:

(1) Each consumer is limited to tasting samples which total no more than 1.5 ounces of spirituous liquor in any calendar day.

(2) The consumer shall not be charged for any spirituous liquor tasting sample.

(3) The spirituous liquor used in the consumer tasting event shall be purchased at the regular sales price from the ABC store where the event is being held by the permit holder conducting the event.

(4) A consumer tasting event shall not be allowed when the sale of spirituous liquor is otherwise prohibited on the premises where the tasting is to be conducted.

(5) Tasting samples are not to be offered to, or allowed to be consumed by, any person under the legal age for consuming spirituous liquor.

(6) Point-of-sale advertising materials and advertising specialties may be furnished for use at the event by the permit holder conducting the event.

(7) A consumer tasting event may be advertised by the permit holder in any type of media, including, print, radio, television, Internet, and signage and these advertisements may include the date, time, location, and other information regarding the event."

SECTION 2. The ABC Commission shall adopt rules implementing this act, including any appropriate restrictions on the time, place, and manner of conducting consumer tasting events.

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 988:
Spirituous Liquor Tasting at ABC Stores

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Graham	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S988-CSRO-20		

SUMMARY: ***Senate Bill 988 amends the ABC law to allow spirituous liquor consumer tasting events at local ABC stores.***

The Proposed Committee Substitute makes a technical change and directs the ABC Commission to adopt rules to implement the act.

BILL ANALYSIS:

Senate Bill 988 adds a new section to the law allowing any commercial permit holder, a distiller broker representative permit holder, or a distiller representative permit holder to conduct a consumer tasting event at an ABC store subject to the following conditions:

- Each consumer is limited to no more than 1.5 ounces of spirituous liquor in a calendar day.
- The consumer cannot be charged for the tasting sample.
- The permit holder must purchase the spirituous liquor used in the tasting event at regular sales price from the ABC store where the event is held.
- A consumer tasting event shall not be held when the sale of spirituous liquor is otherwise prohibited in the ABC store.
- Tasting samples cannot be offered to or allowed to be consumed by any person under the legal age for consuming liquor.
- The permit holder conducting the event may provide point-of-sale advertising material and advertising specialties.
- The permit holder may advertise the consumer tasting event in any type of media, including print, radio, television, Internet, and signage, and may include the date, time, location and any other relevant information.

Section 2 of the PCS directs the ABC Commission to adopt rules implementing the act, including any appropriate restrictions on the time, place and manner of conducting consumer tasting events.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S988-SMRO-40(CSRO-20) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 780
PROPOSED COMMITTEE SUBSTITUTE S780-CSRC-11 [v.1]

4/20/2009 7:45:15 PM

Short Title: Struc. Settlement Annuities/Ins. Guar. Assn. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND COVERAGE UNDER THE INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO STRUCTURED SETTLEMENT ANNUITIES FOR MATTERS INVOLVING PERSONAL INJURY OR ILLNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-16 is amended by adding a new subdivision to read:

"(17a) 'Structured settlement annuities' means any contracts or certificates for annuities issued to fund, in whole or in part, a settlement agreement for a matter involving personal injury or illness, including any settlement agreement permitted under Chapter 97 of the General Statutes."

SECTION 2. G.S. 58-62-21(a) reads as rewritten:

"**§ 58-62-21. Coverage and limitations.**

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

(1) To persons other than persons specified in subdivisions (3) and (4) of this subsection who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this ~~subsection, and~~ subsection;

(2) To persons other than persons specified in subdivisions (3) and (4) of this subsection who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the ~~associations.~~associations;

(3) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside; and

(4) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are not residents of this State, but only if all of the following conditions are met:

a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article; and

b. Neither the payees (or beneficiaries of payees if the payees are deceased) nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside."

SECTION 3. This act is effective when it becomes law and applies to claims submitted to the Insurance Guaranty Association on or after that date.

SENATE BILL 780:
Struc. Settlement Annuities/Ins. Guar. Assn

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S780-CSRC-11		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 780 would expand the protection against defaulting insurers under the Life and Health Insurance Guaranty Association Act to include North Carolina residents who settle claims for personal injury or illness under an agreement funded at least in part by an annuity, regardless of whether the owner of the annuity contract is a State resident.***

The PCS would also extend protection to non-residents who settle their claims for personal injury or illness under agreements funded by annuities, if the following conditions are met:

> ***1) no coverage is offered by the insurance guaranty association of the state in which the payee or the contract owner reside, and***
>
> ***2) the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association.***

[As introduced, this bill was identical to H889, as introduced by Reps. Haire, Love, Blue, Faison, which is currently in House Judiciary III.]

CURRENT LAW: The Life and Health Insurance Guaranty Association Act, codified as Article 62 of Chapter 58 of the General Statutes, provides protection to eligible persons against defaults by issuers of certain life and health insurance policies and annuity contracts, by creating an association of insurers responsible for fulfill the obligations of the defaulting insurer, subject to certain limitations.

Currently, the Act protects owners of annuity contracts issued to fund structured settlement agreements who reside in this State at the time when the issuing insurer is determined to be delinquent. If the contract owner is a non-resident, coverage is provided only if:

- the issuing insurer is domiciled in North Carolina and never held a license in the state where the contract owner resides, and
- the state where the contract owner resides has an association similar to North Carolina's Life and Health Insurance Guaranty Association but the contract owner is not eligible for coverage by that association.

G.S. 58-62-21(b)(2).

Currently, the Act limits its coverage to the lesser of the amount due under the annuity issued by the defaulting insurer or $300,000.00 with respect to any one individual.

BILL ANALYSIS: Under a structured settlement, the funding annuity is issued to someone other than the person whose claim is being settled. Under current law, if a North Carolina resident settles a personal injury or workers compensation claim by means of a structured settlement, and if the entity to whom the funding annuity is issued is not a resident of North Carolina, the Act does not provide coverage in the event that the annuity issuer becomes unable to meet its contractual obligations.

The PCS would provide coverage to payees under annuities issued to fund structured settlements regardless of whether the owner of the annuity contract is a resident of this State, where the payee is a resident of North Carolina at the time the issuer of the annuity is determined to be unable to meet its contractual obligations.

If the payee under a structured settlement annuity is not a resident of this State at the time the annuity issuer is determined to be unable to meet its contractual obligations, the PCS would provide coverage only if both of the following conditions are met:

- the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association; and
- no coverage is offered by the insurance guaranty association of the state(s) in which the payee or the contract owner reside

By expanding the class of covered persons to include annuity payees who do not own the annuity contracts, the $300,000.00 limit under this section would apply to such individuals.

EFFECTIVE DATE: This act is effective when it becomes law and would apply to claims submitted to the Insurance Guaranty Association on or after that date.

S780-SMRC-15(CSRC-11) v1

Principal Clerk ____
Reading Clerk ____

Corrected: SB 43 - Require Boating Safety Education has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 28, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 68	No ABC Establishments W/I 1,000 Ft. of Sch.	Senator Dorsett
SB 428	Stay on Homeowners Insurance Actions.	Senator Boseman
SB 476	Create Titling Categories-Replica/Street Rod.	Senator East
SB 654	Create Exemption/Size-Weight for Sage Haulers.	Senator Jones
SB 660	Auto Insurance/Diminution in Value.	Senator Rucho
SB 686	Electronic Reporting of Abandoned Property.	Senator Foriest
SB 761	Street Construction/Developer Responsibility.	Senator Brown
SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Senator Berger
SB 820	Create New Titling Categories.	Senator Hartsell
SB 981	Mortgage Guaranty Insurance Revisions.	Senator Jenkins
SB 988	Spirituous Liquor Tasting at ABC Stores.	Senator Graham

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Bill added to the agenda - S476 (Create Titling Categories-Replica/Street Rod.)

SENATE
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AND
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SB 68	No ABC Establishments W/I 1,000 Ft. of Sch.	Senator Dorsett
SB 428	Stay on Homeowners Insurance Actions.	Senator Boseman
SB 476	Create Titling Categories-Replica/Street Rod.	Senator East
SB 654	Create Exemption/Size-Weight for Sage Haulers.	Senator Jones
SB 656	Remove Controlled Access Highway Restriction.	Senator Jones
SB 660	Auto Insurance/Diminution in Value.	Senator Rucho
SB 686	Electronic Reporting of Abandoned Property.	Senator Foriest
SB 761	Street Construction/Developer Responsibility.	Senator Brown
SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Senator Berger
SB 820	Create New Titling Categories.	Senator Hartsell
SB 981	Mortgage Guaranty Insurance Revisions.	Senator Jenkins
SB 988	Spirituous Liquor Tasting at ABC Stores.	Senator Graham

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Senator Berger
SB 820	Create New Titling Categories.	Senator Hartsell
SB 981	Mortgage Guaranty Insurance Revisions.	Senator Jenkins
SB 988	Spirituous Liquor Tasting at ABC Stores.	Senator Graham

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, April 28, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 428	Stay on Homeowners Insurance Actions.	Sen. Boseman
SB 820	Create New Titling Categories.	Sen. Hartsell
SB 476	Create Titling Categories-Replica/Street Rod.	Sen. East
SB 68	No ABC Establishments W/I 1,000 Ft. of Sch.	Sen. Dorsett
SB 988	Spirituous Liquor Tasting at ABC Stores.	Sen. Graham
SB 761	Street Construction/Developer Responsibility.	Sen. Brown
SB 43	Require Boating Safety Education.	Sen. Jones
SB 654	Create Exemption/Size-Weight for Sage Haulers.	Sen. Jones
SB 656	Remove Controlled Access Highway Restriction.	Sen. Jones
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 686	Electronic Reporting of Abandoned Property.	Sen. Foriest
SB 780	Struc. Settlement Annuities/Ins. Guar. Assn.	Sen. Berger
SB 981	Mortgage Guaranty Insurance Revisions.	Sen. Jenkins

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 28, 2009

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

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

S.B. **761** Street Construction/Developer Responsibility.

Draft Number:	35297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **780** Struc. Settlement Annuities/Ins. Guar. Assn.

Draft Number:	15249
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 29, 2009

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

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

S.B. **68** No ABC Establishments W/I 1,000 Ft. of Sch.

Draft Number:	55349
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 28, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
A. SOLARI	DST
David Starling	DST
Paul Stad	NCBA
Jennifer Cohen	IFNC
NORA CARR	Guilford County Schools
John Taggart	Genworth Mortgage Ins.
JOEL Pasternak	RMIC
Crystal Martin	Republic Mortgage Ins.
Jeannie B. Green	Genworth Mortgage Ins. Raleigh, NC
JOE LANIER	520 WICKER
David Wojnar	Distilled Spirits Council

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Senate Commerce Committee — **Name of Committee**

April 28, 2009 — **Date**

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Robert MACK	NCDOT
LOWELL MILLER	NCLHIGA
William Patterson	Hunton & Williams
Mason Rhodes	NC DMV
Joey GARDNER	DMV License + Theft
Mary Mosebolte	Payne Sprill
REV. MARK CREECH	CAL
Debra DeCamillis	UNC-IOG
Paul Pulley	NCAJ
FRANK Mayer	NCLM
Harry Patterson	Patterson Harkins LLP

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Senate Commerce Committee — **Name of Committee**

April 28, 2009 — **Date**

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Ken McHon	Ken McHon & Assoc.
Mark Johnson	News & Observer / Charlotte Observer
TYLER NEWMAN	BASE
Connie Hanley	Electricities of NC
David McKinnon	NC Realtors
Mike Okun	NC State AFL-CIO
Elizabeth Dalton	NCRMA

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Senate Commerce Committee — April 28, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
DSO Peter A Bohlen	US COAST GUARD AUX 5th District
Marie Waldron	Navant Hunter

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
JULIAN PHILPOTT	NCFB
Roger Baddorff	"
Steve Carroll	" "
Lee Dunn	NCIUA
Robert Paschal	Young Moore
[illegible]	FCB
Mike Herring	NC ABC Commission
Bill Hester	S.W.S.
Lauren Whaley	NC Credit Union League
Dan Schlinz	NC Credit Union League
DAVID RICE	MANNING FULTON

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 28, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CURT LEONARD	AMERICAN COUNCIL OF LIFE INSURERS 101 NW CONSTITUTION AVE, WASH DC
David Ozgo	Distilled Spirits Council 250 I St, N.W. Wash. D.C.
Mallory Hatcher	NWC
Louis Belo	NCDOI
Allen Hunter	NC DST
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Tim Green	Town of Morrisville tgreen@townofmorrisville.org
Ray Martinez	NCDOI
Renee Roach	NCDOT
Kevin Lacy	NCDOT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	NCDOT
Joni Allen	BEGINNINGS
Patrick Baffa	NMRS
Russ Dubisky	State Farm
[illegible]	HMAC Insurance
Jere Snyder	SNYDER PRODUCTIONS
Calvin W. McDougal	Mecklenburg Co. ABC
[illegible]	CAA
Barry Becton	DIAGEO
Lisa Martin	NC Home Builders
John Pollard	NCAMA

SENATE BILL 428

Short Title:	Stay on Homeowners Insurance Actions.	(Public)
Sponsors:	Senators Boseman; Brown, Preston, and Soles.	
Referred to:	Commerce.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A TEMPORARY STAY ON INCREASED SURCHARGES AND DEDUCTIBLES UNDER THE BEACH PLAN AND THE FAIR PLAN AND TO TEMPORARILY STAY PROPERTY INSURANCE RATE INCREASES FOR HOMEOWNERS POLICIES ACROSS THE STATE.

Whereas, the economy of the State is in historic decline, as evidenced by the projected $2.2 billion shortfall in revenue for the 2009-2010 fiscal year; and

Whereas, the unemployment rate for December 2008 by the Employment Security Commission was 8.7%, an increase of 85% over the rate in December 2007; and

Whereas, over 53,995 homes in North Carolina entered foreclosure in 2008, and an additional 2,221 homes entered foreclosure in January 2009; and

Whereas, the homeowners insurance rate increase approved by the Department of Insurance in December 2008 and scheduled to take effect in May 2009 increases rates by 22% in portions of Currituck, Hyde, Dare, and Pamlico Counties and increases rates by 29.8% in portions of Brunswick, New Hanover, Onslow, and Pender Counties; and

Whereas, over the last six years, the Department of Insurance estimates that homeowners insurance rates in the Beach Plan beach area have increased 90%, and rates in the Beach Plan coastal area have increased 65%; and

Whereas, seven of the counties included in the Beach Plan's beach and coastal areas are classified by the Department of Commerce as Tier One counties, meaning that they are among the 40 most economically distressed counties in the State and are eligible for the highest level of economic development incentives; and

Whereas, nine of the counties included in the Beach Plan's beach and coastal areas have poverty rates above the statewide average and median family income below the statewide average, according to U.S. Census Bureau 2007 estimates; and

Whereas, 57% of properties insured by the Beach Plan have an insured value for building and contents of $300,000 or less; and

Whereas, the citizens of North Carolina who are struggling to hold onto their homes and jobs should not be required to pay higher insurance rates during this economic crisis; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The filing by the North Carolina Insurance Underwriting Association (NCIUA) approved by the Department of Insurance on November 21, 2008, and designated by the Department as PC121215 increasing from fifteen percent (15%) to twenty-five percent (25%) the factor or surcharge for homeowners coverage shall not take effect.

SECTION 2. The filing by the NCIUA approved by the Department on November 21, 2008, and designated by the Department as PC122445 increasing from five percent (5%) to

fifteen percent (15%) the factor or surcharge for homeowners windstorm and hail only coverage shall not take effect.

SECTION 3. The residential deductible guideline submitted by the NCIUA, approved by the Department on November 21, 2008, and designated by the Department as PC122635 shall not take effect.

SECTION 4. The residential deductible guideline submitted by the North Carolina Joint Underwriting Association (NCJUA), approved by the Department on November 21, 2008, and designated by the Department as PC122682 shall not take effect.

SECTION 5. The commercial deductible guideline submitted by the NCIUA, approved by the Department on November 21, 2008, and designated by the Department as PC122637 shall not take effect.

SECTION 6. The commercial deductible guideline submitted by the NCJUA, approved by the Department on November 21, 2008, and designated by the Department as PC122683 shall not take effect.

SECTION 7. There shall be no surcharge or deductible increases or changes for coverages as specified in Sections 1 through 6 of this act on or after the effective date of this act.

SECTION 8. Rate increases resulting from the 2008 Rate Filing approved by the Commissioner of Insurance in the Consolidated Settlement Agreement and Consent Order dated December 18, 2008, shall not take effect, nor shall these rate increases be used by the NCIUA or the NCJUA when determining rates for coverage. In addition, there shall be no rate increases for coverage as specified in this section subsequent to the effective date of this act.

SECTION 9. Premiums or deductibles paid in violation of this act shall be refunded by insurers, the NCIUA, and the NCJUA, as applicable.

SECTION 10. Sections 1 through 9 of this act are effective when they become law and apply to policies issued or renewed on or after that date. The remainder of this act is effective when it becomes law. This act expires July 1, 2010.

SENATE BILL 428:
Stay on Homeowners Insurance Actions

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 428 would place a stay on surcharge increases for wind and hail portions of homeowners policies and separate homeowners' wind and hail policies issued by the North Carolina Insurance Underwriting Association (NCIUA), also known as the Beach Plan. The bill also stays all residential and commercial deductible increases for policies issued by the NCIUA and the North Carolina Joint Underwriting Association (NCJUA), also known as the FAIR Plan. Finally, the bill stays all statewide homeowners coverage rate increases approved by the Commissioner of Insurance and prohibits the use of these rate increases by the NCIUA and the NCJUA when determining base rates for homeowners coverage.***

Senate Bill 428 is effective when it becomes law and applies to policies issued or renewed on or after that date. The bill expires July 1, 2010.

BACKGROUND: On March 20, 2009, the Wake County Superior Court held that rate increases under the Beach and FAIR Plans were not approved by the Commissioner of Insurance according to proper statutory procedure. The court then stayed the rate increases and enjoined the Department from enforcing these increases. The Department of Insurance did not appeal the injunction, but did appeal the decision of the court remanding the approval of the rate increases back to the Commissioner on procedural grounds. The North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association have ceased implementation of the rate and deductible increases and have begun the process of refunding monies and, in the case of some deductible changes, billing additional amounts to insureds under the Beach and FAIR Plans.

The court's decision did not stay the statewide rate increases addressed in Section 8 of the bill.

BILL ANALYSIS: Below is a summary of current surcharges and deductibles under the Beach and FAIR Plans and increases to these surcharges and deductibles approved by the Commissioner of Insurance prior to the court decision.

- **Section 1 of the bill**
  Surcharge on Homeowners Policies (wind portion)
  Increased from 15% to 25%
  Effective for policies issued or renewed on or after February 1, 2009

- **Section 2 of the bill**
  Surcharge on Wind Only Homeowners Policies
  Increased from 5% to 15%
  Effective for policies issued or renewed on or after February 1, 2009

- **Sections 3 and 4 of the bill**
  Residential Deductible Guidelines for Wind and Hail
  1. Current residential deductible guidelines under the Beach Plan:
  \$500 flat deductible for less than \$100,000 in coverage
  \$1000 flat deductible for \$149,999-\$249,999

$2,000 flat deductible for $250,000 and above

2. Current residential deductible guidelines under the FAIR Plan:
$500 flat deductible on all FAIR Plan residential properties
(This deductible applies to all perils, not just wind and hail.)

3. Revised residential guidelines under both Beach and FAIR Plans:
$1,000 flat deductible for less than $50,000 in building coverage
2% of building value for more than $50,000 in coverage
(Bald Head Island—5%)
(FAIR plan increases apply only to Territories 42 and 43.)

Revised deductibles are effective for policies issued on or after February 1, 2009 and for policies renewed on or after April 1, 2009.

All deductibles are per occurrence, not annual.

Deductible remains the same for all perils except wind and hail--$500 flat deductible for residential, $1,000 for commercial.

- **Sections 5 and 6 of the bill**
  Commercial Deductible Guidelines for Wind and Hail

  1. Current commercial deductible guidelines under Beach Plan
  $1000 flat deductible for less than $100,000 in coverage
  $2,500 flat deductible for less than $100,000-$249,999
  $5,000 flat deductible for $250,000 and above

  2. Current commercial deductible guidelines under FAIR Plan
  $500 flat deductible for less than $100,000 in coverage
  $1,000 flat deductible for $100,000-249,999
  $2,500 flat deductible for $250,000 and above

  3. Revised commercial deductible guidelines under both Beach and Fair Plans
  $1,000 flat deductible for less than $50,000 in building coverage
  2% of combined building value for more than $50,000 in coverage
  (FAIR Plan deductibles apply only to Group II, Seacoast Territories II and III.)

Revised deductibles are effective for policies issued on or after February 1, 2009 and for policies renewed on or after April 1, 2009.

Deductible remains the same for all perils except wind and hail: $1,000 flat deductible under Beach Plan and $500-$2500, depending on the amount of coverage, under the FAIR Plan.

- **Section 7**
  Future Surcharge Increases
  The bill specifically prohibits surcharge or deductible increases under the Beach Plan and deductible increases under the FAIR plan on or after the effective date of the act. Please note that the act expires on July 1, 2010.

- **Section 8**
  Statewide Rate Increases

The North Carolina Rate Bureau requested an average statewide homeowners rate increase of 19.5% in its filing to the Commissioner of Insurance. The Commissioner approved an average statewide rate increase of 4.05%.

BACKGROUND: The purpose of the Beach Plan is to serve as a market of last resort to make property insurance available to people who are unable to buy insurance through the standard or voluntary market. The Beach Plan functions as an insurance company by acting as an agent for insurers. All property and casualty insurers in the State are members of the Plan. By statute, the Plan covers two areas: (1) the barrier islands, referred to under the Plan as the beach area; and (2) 18 coastal counties, referred to as the coastal area. The Plan offers homeowners, dwelling, and wind only coverage in the beach area and homeowners and wind only coverage in the coastal area. Commercial coverage is also available under the Plan.

The Plan's members include all insurers authorized to write property insurance in North Carolina. All member companies share in the expenses, profits, and losses of the Plan. Each year that the Plan generates revenues in excess of claims paid, the Plan may elect to return the excess funds to the member companies or hold those funds as "surplus." The surplus is used to cover Plan losses where claims filed are greater than the premium received. Should claims exceed the revenues from premiums, the amount of surplus, and any applicable reinsurance, member companies are assessed by the Plan to pay the claims. Assessments are calculated based on a member's market share and are reduced by credits given for writing coverage in the beach and coastal areas. Providing credits against assessments for coverage written in the beach and coastal area was intended to encourage insurers to write such policies and limit the growth of exposure to risk in the Beach Plan.

The NCIUA's Plan of Operation is adopted by its Board of Directors and submitted to the Commissioner of Insurance for approval. The Plan of Operation sets forth the administration of the Plan including the membership and manner of election of members to the Board of Directors.

The Plan also files with the Commissioner for his or her approval rates for separate policies of windstorm and hail, policy deductible plans to be paid by property owners, and the percentage differential or surcharge for coverage offered by the Plan. The surcharge is a percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to purchase homeowners coverage through the Plan. The surcharge applies to homeowner's coverage and homeowner's wind and hail coverage only.

S428-SMRG-20(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 820
PROPOSED COMMITTEE SUBSTITUTE S820-CSSU-24 [v.2]

4/24/2009 11:29:06 AM

Short Title: Create New Titling Categories. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE NEW MOTOR VEHICLE TITLING AND REGISTRATION CATEGORIES FOR MOTOR VEHICLES CLASSIFIED AS REPLICA VEHICLES, STREET RODS, AND CUSTOM VEHICLES, AND TO MAKE CORRESPONDING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(43) reads as rewritten:

"(43) Specially Constructed Vehicles. – ~~Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.~~Motor vehicles, excluding motorcycles, that may be registered under this Chapter and that fit within one of the following categories:

a. Replica vehicle. – A vehicle originally sold unassembled and manufactured from a kit, which when assembled replicates an earlier year, make, and model vehicle.

b. Street rod vehicle. – A vehicle manufactured prior to 1949, which has been modernized from the manufacturer's original design or has a body constructed from nonoriginal materials and for which the owner seeks a street rod registration classification.

c. Custom vehicle. – A vehicle manufactured on or after 1949, which has been modernized from the manufacturer's original design or has a body constructed from nonoriginal materials and for which the owner seeks a custom vehicle registration classification.

Unless the presence of specific equipment was required by State law as a condition of sale in the model year listed on the certificate of title, the presence of the equipment is not required for the operation of a specially constructed vehicle. Specially constructed vehicles are exempt from any provision of State law that requires periodic vehicle inspections or the use and inspection of emission controls."

SECTION 2. Part 3 of Article 3 of Chapter 20 is amended by adding a new section to read:

"**§ 20-53.1. Specially constructed vehicle certificate of title and registration.**

Specially constructed vehicles shall be titled in the following manner:

(1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of "Replica" shall be applied to the title and registration card. All replica vehicle titles shall be branded "Specially Constructed Vehicle".

(2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of "Street Rod" applied to the title and registration card. All street rod vehicle titles shall be branded "Specially Constructed Vehicle".

(3) The model year of a custom vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with the label of "Custom" applied to the title and registration card. All custom vehicle titles shall be branded "Specially Constructed Vehicle".

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

(a) The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8.

(5) The required fee has not been paid, including any additional registration fees or taxes due pursuant to G.S. 20-91(c).

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture.

(8) The vehicle is a golf cart or utility vehicle.

(9) The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1).

(10) **(Effective January 1, 2011)** The North Carolina Turnpike Authority has notified the Division that the owner of the vehicle has not paid the amount of tolls, fees, and civil penalties the owner owes the Authority for use of a Turnpike project.

(b) For specially constructed vehicles or vehicles originally built by a generally recognized manufacturer, certificates of title and registration shall not be denied or delayed on

the grounds that the originating title is from out-of-state, the vehicle is of a certain age, or the vehicle has not been first inspected by a representative of the Division unless there is some probable cause to believe an individual vehicle has some issue particular to it that justifies an inspection before title and registration are issued."

SECTION 4. G.S. 20-70 is amended by adding a new subsection to read:

"(c) The notification and registration requirements contained in subsections (a) and (b) of this section regarding an engine change shall only be required if the motor vehicle into which a new engine is installed uses an engine number as the sole means to identify the vehicle."

SECTION 5. Sections 1 and 2 of this act become effective October 1, 2009, and apply to applications received by the Division of Motor Vehicles on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 820:
Create New Titling Categories

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S820-CSSU-24		

SUMMARY: The Proposed Committee Substitute for Senate Bill 820 would:

- ***Redefine "specially constructed vehicles" as replica vehicles, street rods, and custom vehicles.***
- ***Exempt specially constructed vehicles from vehicle inspections.***
- ***Require branding of specially constructed vehicle titles "Specially Constructed Vehicle" with title and registration labeled "Replica", "Street Rod", and "Custom", as appropriate.***
- ***Prohibit DMV from denying or delaying registration because originating title is out-of-state, the vehicle is a certain age, or the vehicle has not been inspected first by DMV.***
- ***Require notification and new registration with DMV when an engine in a vehicle is replaced only if the vehicle into which the new engine is installed uses an engine number as the sole means to identify the vehicle.***

CURRENT LAW: Any vehicle intended to be operated on the highway must be registered with the Division of Motor Vehicles, and the owner must apply to the Division for a certificate of title, registration plate, and registration card. The Division is required to refuse registration of any vehicle that is unfit or unsafe to be operated on the highway.

Under current law, a "specially constructed vehicle" is defined as one that is not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer and is *not materially altered* from original construction. A "reconstructed vehicle" is defined as one that *has been materially altered* from original construction due to removal, addition or substitution of parts, and includes custom assembled vehicles. A reconstructed vehicle must have a certificate of title and registration card that is branded as such, and it is a Class 2 misdemeanor to transfer a reconstructed vehicle without disclosing that fact in writing.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 820 would do the following:

Redefine "specially constructed vehicles". The PCS would delete the current definition, which includes that the vehicle not be materially altered from original construction. The new definition would include vehicles, excluding motorcycles, in the following categories:

- Replica – a vehicle sold unassembled, manufactured from a kit, and when assembled replicates an earlier year, make, and model vehicle.
- Street rod – a vehicle manufactured before 1949, modernized from the manufacturer's original design or with a body constructed from nonoriginal materials, for which the owner seeks a street rod classification.
- Custom – a vehicle manufactured on or after 1949, modernized from the manufacturer's original design or with a body constructed from nonoriginal materials, for which the owner seeks a custom classification.

Exempt specially constructed vehicles from inspections. The PCS would exempt specially constructed vehicles from any periodic vehicle inspections required by law or the use and inspection of emission controls.

Title and registration of specially constructed vehicles. The PCS would provide that specially constructed vehicles be titled as follows:

- Replica
  - Titled as year, make, and model of vehicle replicated
  - Title and registration labeled "Replica"
  - Title branded "Specially Constructed Vehicle"
- Street Rod
  - Titled as manufacturer's assigned model year
  - Title and registration labeled "Street Rod"
  - Title branded "Specially Constructed Vehicle"
- Custom
  - Titled as manufacturer's assigned model year
  - Title and registration labeled "Custom"
  - Title branded "Specially Constructed Vehicle"

These categories of vehicles would no longer be branded as "Reconstructed Vehicle" or titled as the year they were assembled or altered.

Refusing registration. The PCS would prohibit the Division from denying or delaying registration and certificate of title based on the grounds that the originating title is from out-of-state, that the vehicle is a certain age, or that the vehicle has not been inspected by the Division, unless there is probable cause to believe the vehicle has an issue that justifies an inspection prior to issuing title and registration.

Notification and registration when new engine installed. Current law requires the owner of a vehicle to notify the Division when the engine is replaced and the engine number is on the registration records. The owner must also surrender the registration and title and apply for a duplicate with the new engine number. The PCS would make the notification and re-registration requirement applicable for an engine change only if the engine number is the sole means of identifying the vehicle.

EFFECTIVE DATE: The sections of the bill redefining "specially constructed vehicle" and providing for titling and registration of those vehicles would become effective October 1, 2009, and apply to applications received by the Division on or after that date. The remainder of the act would be effective when it becomes law.

S820-SMSU-50(CSSU-24) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 476
PROPOSED COMMITTEE SUBSTITUTE S476-CSSU-28 [v.1]

4/27/2009 8:36:42 PM

Short Title: Create Titling Categories-Replica/Street Rod. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE NEW MOTOR VEHICLE TITLING AND REGISTRATION CATEGORIES FOR MOTOR VEHICLES CLASSIFIED AS REPLICA VEHICLES, STREET RODS, MODIFIED VEHICLES, AND CUSTOM-BUILT VEHICLES, AND TO MAKE CORRESPONDING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(15a) Inoperable Vehicle. – A motor vehicle that is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area."

SECTION 2. G.S. 20-4.01(33) reads as rewritten:

"(33) a. Flood Vehicle. – A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. – A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. – A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential ~~parts; and includes glider kits and custom assembled vehicles.~~parts and includes glider kits.

d. Salvage Motor Vehicle. – Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. – A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. – A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered."

SECTION 3. G.S. 20-4.01(43) reads as rewritten:

"(43) Specially Constructed Vehicles. – ~~Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.~~ Motor vehicles required to be registered under this Chapter and that fit within one of the following categories. For purposes of this subdivision, 'materially altered' means (i) the removal, addition, or substitution of new or used essential parts or (ii) the modification of any essential part from its original configuration or design as originally produced by the manufacturer; and 'essential parts' means the vehicle's frame rail, body, and chassis, or any component part of the frame rail, body, or chassis.

a. Replica vehicle. – A vehicle, excluding motorcycles, originally sold unassembled and manufactured from a kit, which when assembled replicates an earlier year, make, and model vehicle.

b. Street rod vehicle. – A vehicle, excluding motorcycles, manufactured prior to 1949, which has been materially altered or has a body constructed from nonoriginal materials.

c. Modified vehicle. – A vehicle, excluding motorcycles, manufactured on or after 1949 which has been materially altered or has a body constructed from nonoriginal materials.

d. Custom-built vehicle. – A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts, which has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes motorcycles which were originally sold unassembled and manufactured from a kit or which have been materially altered or has a body constructed from nonoriginal materials."

SECTION 4. Part 1 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-49.3. Annual inspection training of Division agents.**

Every agent of the Division of Motor Vehicles, License and Theft Bureau, shall attend an annual in-service training course that incorporates a classroom training program detailing the inspection procedure for inoperable vehicles and complete a physical examination of a test vehicle to verify that the agent can determine which vehicles are operable or inoperable based on the uniform training required by this section to ensure uniform statewide enforcement of the titling provisions of this Part."

SECTION 5. G.S. 20-53 reads as rewritten:

"**§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**

(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the

Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2

(e) No title shall be issued to an initial applicant for (i) a foreign vehicle that is 35 model years or older or (ii) a specially constructed vehicle prior to the completion of a vehicle examination conducted by the License and Theft Bureau of the Division of Motor Vehicles. However, upon such application and the submission of any required documentation, the Division shall be authorized to register the vehicle pending the completion of the examination of the vehicle. Such registration shall be valid for one year but shall not be renewed unless and until the vehicle examination has been completed."

SECTION 6. Part 3 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-53.1. Specially constructed and inoperable vehicle titles.**

(a) Specially constructed vehicles shall be titled in the following manner:

(1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of 'Replica' shall be applied to the title and registration card. All replica vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of 'Street Rod' applied to the title and registration card. All street rod vehicle titles will be branded as 'Specially Constructed Vehicle.'

(3) The model year of a modified vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with the label of 'Modified' applied to the title and registration card. All modified vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(4) Custom-built vehicles shall be titled and registered showing the make as 'Custom-built,' and the year the vehicle was built shall be the vehicle model year. All custom-built vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(b) Inoperable vehicles may be titled, but no registration may be issued until such time as the License and Theft Bureau inspects the vehicle to ensure it is mechanically fit for operation on a public street, highway, or public vehicular area. Once a vehicle has been deemed safe and operable pursuant to an inspection by the License and Theft Bureau, the Commissioner shall title the vehicle by classifying it in the proper category and collecting all highway use taxes applicable to the value of the car at the time the vehicle is retitled to a proper classification described in this section.

(c) Motor vehicle certificates of title and registration cards issued pursuant to this section shall be branded in accordance with this section. As used in this section, 'branded' means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Specially constructed vehicle.

(2) Inoperable vehicle."

SECTION 7. Part 3 of Article 3 of Chapter 20 of the General Statues is amended by adding a new section to read:

"**§ 20-53.2. Failure to disclose status of specially constructed or inoperable vehicles shall be a misdemeanor.**

It shall be unlawful for any transferor of a motor vehicle to transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a specially constructed vehicle or

inoperable vehicle without disclosing that fact in writing to the transferee prior to the transfer of the vehicle."

SECTION 8. Part 3 of Article 3 of Chapter 20 of the General Statues is amended by adding a new section to read:

"**§ 20-53.3. Appeal of specially constructed vehicle classification determination to Vehicle Classification Review Committee.**

(a) Any person aggrieved by the Division's determination of the appropriate vehicle classification for a specially constructed vehicle may request review of that determination by the Vehicle Classification Review Committee. This review shall be initiated by completing a Vehicle Classification Review Request and returning the request to the Division. Such Vehicle Classification Review Request shall be made on a form provided by the Division. The decision of the Review Committee may be appealed to the Commissioner of Motor Vehicles. The decision of the Commissioner is final, and no further appeal is authorized.

(b) The Vehicle Classification Review Committee shall consist of five members. Three members shall be personnel of the License and Theft Bureau of the Division of Motor Vehicles and shall be designated by the Commissioner. Two members shall be members of the public and shall be appointed by the Commissioner. Any member of the public so appointed shall serve at the pleasure of the Commissioner."

SECTION 9. G.S. 20-71.3(b) reads as rewritten:

"**§ 20-71.3. Salvage and other vehicles – titles and registration cards to be branded.**

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the ~~Enforcement Section~~ License and Theft Bureau of the Division. For purposes of this section, the term "six model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle."

SECTION 10. G.S. 105-187.3(b) reads as rewritten:

"**§ 105-187.3. Rate of tax.**

(b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to ~~be~~ be:

(1) For replica or custom-built vehicles, the value of all parts, materials, and labor, including the labor of a subcontractor, used to construct the vehicle.

(2) For all other vehicles, the value of the vehicle set in a schedule of values adopted by the Commissioner."

SECTION 11. G.S. 105-187.6(a) is amended by adding a new subdivision to read:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

...

(10) To an inoperable vehicle as defined in G.S. 20-4.01."

SECTION 12. This act becomes effective October 1, 2009, and applies to applications received by the Division of Motor Vehicles on or after that date.

SENATE BILL 476:
Create Titling Categories-Replica/Street Rod

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 28, 2009
Introduced by:	Sen. East	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S476-CSSU-28		

SUMMARY: The Proposed Committee Substitute for Senate Bill 476 would:

- ***Create a new definition for "inoperable vehicle".***
- ***Amend the definition of "reconstructed vehicle" to exclude custom assembled vehicles.***
- ***Redefine "specially constructed vehicles" as replica, street rod, modified, and custom vehicles.***
- ***Require that every DMV agent in the Bureau of License and Theft be trained to inspect vehicles to determine if they are operable or inoperable and prohibit the DMV from issuing a title for a specially constructed vehicle prior to inspection.***
- ***Require branding of title and registration for "specially constructed vehicles" and "inoperable vehicles", and labeling of title and registration as "Replica", "Street Rod", "Modified", and "Custom-built", as appropriate.***
- ***Make it a Class 2 misdemeanor to transfer a specially constructed vehicle or inoperable vehicle without disclosing that fact in writing.***
- ***Create an appeals process for vehicle classification decisions.***
- ***Provide that the presumed market value of replica and custom built vehicles for tax purposes shall be the value of their parts and materials plus the labor necessary to assemble them.***
- ***Exempt inoperable vehicles from the highway use tax.***

CURRENT LAW: Any vehicle intended to be operated on the highway must be registered with the Division of Motor Vehicles, and the owner must apply to the Division for a certificate of title, registration plate, and registration card. The Division is required to refuse registration of any vehicle that is unfit or unsafe to be operated on the highway.

Under current law, a "specially constructed vehicle" is defined as one that is not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer and is *not materially altered* from original construction. A "reconstructed vehicle" is defined as one that *has been materially altered* from original construction due to removal, addition or substitution of parts, and includes custom assembled vehicles. A reconstructed vehicle must have a certificate of title and registration card that is branded as such, and it is a Class 2 misdemeanor to transfer a reconstructed vehicle without disclosing that fact in writing.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 476 would do the following:

"Inoperable Vehicle". The PCS would define "Inoperable Vehicle" as a motor vehicle that is unfit or unsafe to be operated or moved upon a highway.

Amend definition of "Reconstructed Vehicle". The PCS would take custom assembled vehicles out of the definition of "Reconstructed Vehicle".

Redefine "specially constructed vehicles". The PCS would delete the current definition, which includes that the vehicle not be materially altered from original construction. The new definition would include vehicles in the following categories:

- Replica – a vehicle, excluding motorcycles, sold unassembled, manufactured from a kit, and when assembled replicates an earlier year, make, and model vehicle.
- Street rod – a vehicle, excluding motorcycles, manufactured before 1949, which has been materially altered or with a body constructed from nonoriginal materials.
- Modified – a vehicle, excluding motorcycles, manufactured on or after 1949, which has been materially altered or with a body constructed from nonoriginal materials.
- Custom-built – a vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts with an exterior that does not replicate or resemble any other manufactured vehicle. Also includes motorcycles that would otherwise fall into the other categories.

Inspection of vehicles by Division agents. The PCS would require all agents of the DMV License and Theft Bureau to receive training on inspecting and identifying operable and inoperable vehicles. It would also prohibit the Division from issuing a title for a specially constructed vehicle prior to completing an inspection to determine if the vehicle is operable. The Division would be able to register the vehicle for up to one year pending completion of the inspection.

Title and registration of specially constructed and inoperable vehicles. The PCS would provide that specially constructed and inoperable vehicles be titled as follows:

- Replica
  - Titled as year, make, and model of vehicle replicated
  - Title and registration labeled "Replica"
  - Title branded "Specially Constructed Vehicle"
- Street Rod
  - Titled as manufacturer's assigned model year, with manufacturer's name as make
  - Title and registration labeled "Street Rod"
  - Title branded "Specially Constructed Vehicle"
- Modified
  - Titled as manufacturer's assigned model year, with manufacturer's name as make
  - Title and registration labeled "Modified"
  - Title branded "Specially Constructed Vehicle"
- Custom
  - Titled and registered showing model year as the year the vehicle was built, with "Custom-built" as make
  - Title branded "Specially Constructed Vehicle"

- Inoperable
  - Title branded "Inoperable"

Failure to disclose that a vehicle is inoperable or specially constructed. The PCS would make it a Class 2 misdemeanor for any person to transfer a motor vehicle when the person knows that the vehicle is, or was, a specially constructed vehicle or an inoperable vehicle without disclosing it in writing prior to the transfer.

Appeal of title classification. The PCS would create an appeal process from a classification determination to the Vehicle Classification Review Committee, which would consist of three personnel from the License and Theft Bureau and two members of the public appointed by the Commissioner. The decision of the Committee could be appealed to the Commissioner, and that decision would be final.

Tax of vehicles. The PCS would provide that the presumed market value of replica and custom built vehicles would be the value of their parts and materials plus the labor necessary to assemble them, and would add "inoperable vehicles" to the list of full exemptions from the Highway Use Tax.

EFFECTIVE DATE: The act would become effective October 1, 2009, and would apply to applications received by the Division of Motor Vehicles on or after that date.

S476-SMSU-51(CSSU-28) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 68
PROPOSED COMMITTEE SUBSTITUTE S68-CSRO-19 [v.2]

4/27/2009 2:28:17 PM

Short Title: No ABC Establishments W/I 1,000 Ft. of Sch. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE LOCATION OF A NEW ABC LICENSED ESTABLISHMENT WITHIN 1,000 FEET OF A CHURCH, PUBLIC SCHOOL, OR A NONPUBLIC SCHOOL AS DEFINED IN PART 1 OR PART 2 OF ARTICLE 39 OF CHAPTER 115C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected;

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the ~~question.~~question; and

(3) Whether the proposed ABC store is located within 1,000 feet of a church, public school, or any nonpublic school under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes."

SECTION 2. This act becomes effective December 1, 2009, and applies to proposed ABC permits submitted to the Commission for approval on or after that date.

SENATE BILL 68:
No ABC Establishments W/I 1,000 Ft. of Sch

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S68-CSRO-19		Committee Counsel

SUMMARY: Senate Bill 68 would prohibit a new ABC store from being located within 1,000 feet of a church, public school, or nonpublic school.

The bill would become effective December 1, 2009, and apply to proposed ABC permits submitted to the Commission for approval on or after that date.

CURRENT LAW:

Under 18B-801, a local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the ABC Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely affected; and

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

Under rules adopted by the ABC Commission, the opening of a new ABC store will not be approved by the Commission unless at least 30 days notice is given to the Chair of the Commission as to the intended location of the store, and until a public notice has been posted at the intended location for at least 30 days. The Commission will consider objections to the opening of a new ABC store upon a showing that the local board has either considered and overruled or ignored the objections. The rules provide that new stores should not be opened in any area which is principally residential, in unreasonable proximity to any church, school or similar institution, in any slum district or other similarly undesirable area or at any location where there is not sufficient parking to avoid traffic congestion.

BILL ANALYSIS:

Senate Bill 68 would amend the law to authorize a local board to consider whether a proposed ABC store is located within 1,000 feet of a church or school, before choosing the location of the store. This bill would codify part of the restriction contained in the ABC Commission's rule.

The ABC Commission would still have final authority to determine the suitability of the location.

EFFECTIVE DATE:

This act becomes effective December 1, 2009, and applies to proposed ABC permits submitted to the Commission for approval on or after that date.

S68-SMRO-39(CSRO-19) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 988
PROPOSED COMMITTEE SUBSTITUTE S988-CSRO-20 [v.3]

4/27/2009 5:47:24 PM

Short Title: Spirituous Liquor Tasting at ABC Stores. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW SPIRITUOUS LIQUOR TASTING AT LOCAL ABC STORES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1120. Spirituous liquor tasting at ABC stores.**

Notwithstanding G.S. 18B-301(f)(1), the holder of any commercial permit issued under G.S. 18B-1100, a distiller broker representative permit, or a distiller representative permit may conduct a consumer tasting event at an ABC store subject to the following conditions:

(1) Each consumer is limited to tasting samples which total no more than 1.5 ounces of spirituous liquor in any calendar day.

(2) The consumer shall not be charged for any spirituous liquor tasting sample.

(3) The spirituous liquor used in the consumer tasting event shall be purchased at the regular sales price from the ABC store where the event is being held by the permit holder conducting the event.

(4) A consumer tasting event shall not be allowed when the sale of spirituous liquor is otherwise prohibited on the premises where the tasting is to be conducted.

(5) Tasting samples are not to be offered to, or allowed to be consumed by, any person under the legal age for consuming spirituous liquor.

(6) Point-of-sale advertising materials and advertising specialties may be furnished for use at the event by the permit holder conducting the event.

(7) A consumer tasting event may be advertised by the permit holder in any type of media, including, print, radio, television, Internet, and signage and these advertisements may include the date, time, location, and other information regarding the event."

SECTION 2. The ABC Commission shall adopt rules implementing this act, including any appropriate restrictions on the time, place, and manner of conducting consumer tasting events.

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 988:
Spirituous Liquor Tasting at ABC Stores

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Graham	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S988-CSRO-20		Committee Counsel

SUMMARY: ***Senate Bill 988 amends the ABC law to allow spirituous liquor consumer tasting events at local ABC stores.***

The Proposed Committee Substitute makes a technical change and directs the ABC Commission to adopt rules to implement the act.

BILL ANALYSIS:

Senate Bill 988 adds a new section to the law allowing any commercial permit holder, a distiller broker representative permit holder, or a distiller representative permit holder to conduct a consumer tasting event at an ABC store subject to the following conditions:

- Each consumer is limited to no more than 1.5 ounces of spirituous liquor in a calendar day.
- The consumer cannot be charged for the tasting sample.
- The permit holder must purchase the spirituous liquor used in the tasting event at regular sales price from the ABC store where the event is held.
- A consumer tasting event shall not be held when the sale of spirituous liquor is otherwise prohibited in the ABC store.
- Tasting samples cannot be offered to or allowed to be consumed by any person under the legal age for consuming liquor.
- The permit holder conducting the event may provide point-of-sale advertising material and advertising specialties.
- The permit holder may advertise the consumer tasting event in any type of media, including print, radio, television, Internet, and signage, and may include the date, time, location and any other relevant information.

Section 2 of the PCS directs the ABC Commission to adopt rules implementing the act, including any appropriate restrictions on the time, place and manner of conducting consumer tasting events.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S988-SMRO-40(CSRO-20) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 761
PROPOSED COMMITTEE SUBSTITUTE S761-CSSU-26 [v.1]

4/27/2009 11:04:24 AM

Short Title: Street Construction/Developer Responsibility. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RESPONSIBILITY OF DEVELOPERS FOR THE COST OF STREET OR HIGHWAY CONSTRUCTION TO THE AMOUNT NECESSARY TO SERVE PROJECTED TRAFFIC GENERATED BY THE DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require that a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice.

(c) A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide that in lieu of required street construction, a developer may provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development. All funds received by the county under this section shall be transferred to the municipality to be used solely for the development of roads, including design, land acquisition, and construction. Any municipality receiving funds from a county under this section is authorized to expend such funds outside its corporate limits for the purposes specified in the agreement between the municipality and the county. Any formula

adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the county determines that a combination is in the best interest of the citizens of the area to be served.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the county shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the county shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning board. For the authorization to reserve school sites to be effective, the board of commissioners or planning board, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning board shall immediately notify the board of education. The board of education shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning board of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 2. G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within

proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served.

(d) A subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements shall be limited to the amount necessary to serve projected traffic generated by the proposed development or redirected due to the proposed development as a percentage of total use of the required improvement to the street or highway. The percentage of total use is defined as the proportion of projected traffic generated and traffic redirected by the proposed development on the specific improvements required. The percentage consideration does not apply to cost of improvements required to preserve the safe operations of the street or highway.

(e) A subdivision control ordinance may allow a county to enter into an agreement with a developer to reimburse up to, but not exceeding, one hundred percent (100%) of the cost associated with roadway improvements to maintain and enhance the transportation infrastructure. The reimbursement may be paid by the county from funds not otherwise limited as to use by law or from future developments that benefit or utilize the improvements based upon the percentage of total use as defined in subsection (d) of this section. Counties may enter into agreements with one another and municipalities for the purposes of reimbursements and transportation improvements that cross political boundaries."

SECTION 3. G.S. 136-18(29) reads as rewritten:

"(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage ~~lanes and medians~~lanes, traffic control devices, medians, channelization, and other improvements by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day, or ~~more.~~more, including the traffic generated by the proposed development. The minimum traffic volume condition for secondary road routes does not apply for improvements required to preserve the safe operations of the street or highway."

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

SENATE BILL 761:
Street Construction/Developer Responsibility

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S761-CSSU-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 761 would limit the responsibility of developers for the cost of constructing required acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements on streets and highways to the amount necessary to serve traffic generated or redirected by the development.***

CURRENT LAW: Cities and counties are currently authorized to adopt subdivision control ordinances to provide for orderly growth and development, including the coordination of transportation networks within proposed subdivisions with existing or planned streets and highways. A developer may be required to provide funds to be used for the development of roads to serve the occupants, residents, or invitees of the subdivision or development.

The Department of Transportation is currently authorized to establish policies and rules related to the construction of driveway connections onto streets and highways. The Department can require the construction of acceleration and deceleration lanes, traffic storage lanes and medians by others for connections onto secondary road routes with an average daily traffic volume of 4,000 vehicles a day or more.

BILL ANALYSIS: The PCS for Senate Bill 761 would amend the current law to provide that a city or county subdivision control ordinance that requires a developer to provide for the construction and public dedication of acceleration and deceleration lanes, traffic storage lanes, traffic control devices, medians, channelization, and other improvements must be limited to the amount necessary to serve projected traffic generated or redirected by the proposed development. Alternatively, the ordinance may allow for the city or county to enter into an agreement with the developer to reimburse the developer for up to 100% of its cost in the future if the developer pays for the improvement upfront and others benefit from the improvement.

The PCS would also authorize the Department to require construction of improvements for driveway connections onto secondary road routes with an average daily traffic volume of 4,000 vehicles a day or more, including traffic generated by the proposed development, and without regard to traffic volume if they are required to preserve the safe operations of the street or highway.

EFFECTIVE DATE: The act would be effective when it becomes law.

S761-SMSU-45(CSSU-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 43*

Short Title:	Require Boating Safety Education.	(Public)
Sponsors:	Senators Jones; and Preston.	
Referred to:	Commerce.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY REQUIRING BOATING SAFETY EDUCATION PRIOR TO OPERATING A VESSEL WITH A MOTOR OF TEN HORSEPOWER OR GREATER, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON MANDATORY BOATING SAFETY EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes is amended by adding a new section to read:

"**§ 75A-16.2. Boating safety education required.**

(a) No person shall operate a vessel with a motor of 10 horsepower or greater on the public waters of this State unless the operator has met the requirements for boating safety education in accordance with the age provisions established in subsection (c) of this section.

(b) A person shall be considered in compliance with the requirements of boating safety education if the person does one of the following:

(1) Completes and passes the boating safety course instituted by the Wildlife Resources Commission under G.S. 75A-16.1 or another boating safety course that is approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the Wildlife Resources Commission;

(2) Passes a proctored equivalency examination that tests the knowledge of information included in the curriculum of an approved course;

(3) Possesses a valid or expired license to operate a vessel issued to maritime personnel by the United States Coast Guard;

(4) Possesses a State-approved nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number for the vessel, if the boat was new or was sold with a transfer of ownership;

(5) Possesses a rental or lease agreement from a vessel rental or leasing business that lists the person as the authorized operator of the vessel;

(6) Properly displays Commission-issued dealer registration numbers during the demonstration of the vessel;

(7) Operates the vessel under onboard direct supervision of a person who is at least 18 years of age and who meets the requirements of this section;

(8) Demonstrates that he or she is not a resident, is temporarily using the waters of this State for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state or nation of residency;

(9) Has assumed operation of the vessel due to the illness or physical impairment of the initial operator, and is returning the vessel to shore in order to provide assistance or care for the operator; or

(10) Is registered as a commercial fisherman or a person who is under the onboard direct supervision of a commercial fisherman while operating the commercial fisherman's boat.

Any person who operates a vessel with a motor of 10 horsepower or greater on the waters of this State shall, upon the request of a law enforcement officer, present to the officer a certification card or proof that the person has complied with the provisions of this section.

(c) Enforcement of the requirement for boating safety education shall be phased in as follows:

(1) Vessel operators 20 years of age or younger shall meet the requirements by July 11, 2011;

(2) Vessel operators 30 years of age or younger shall meet the requirements by July 11, 2012;

(3) Vessel operators 40 years of age or younger shall meet the requirements by July 11, 2013;

(4) Vessel operators 45 years of age or younger shall meet the requirements by July 11, 2014;

(5) Vessel operators 50 years of age or younger shall meet the requirements by July 11, 2015;

(6) All vessel operators, regardless of age, shall meet the requirements by July 11, 2016.

(d) Any person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction, as provided in G.S. 14-3.1, and the court shall assess a penalty of one hundred dollars ($100.00) and no court costs for each violation. A person may not be convicted of violating this section if, when tried for the offense, the person produces in court a certification card or proof that the person has completed and passed a boating safety course in compliance with subdivision (b)(1) of this section.

(e) No unit of local government shall enact any ordinance or rule relating to boating safety education, and this law preempts all existing ordinances or rules."

SECTION 2. G.S. 75A-13.3(b) reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

...

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the ~~watercraft;~~ watercraft and who is in compliance with G.S. 75A-16.2; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boating safety certification card issued by the ~~Commission or~~ Commission, proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators ~~(NASBLA);~~ (NASBLA), or proof of other boating safety education in compliance with G.S. 75A-16.2; and (ii) produces that identification and ~~certification card~~

proof upon the request of an officer of the Commission or local law enforcement agency.

...."

"**SECTION 3.** This act is effective when it becomes law, and enforcement shall take effect as provided in G.S. 75A-16.2(c), as enacted in this act.

SENATE BILL 43:
Require Boating Safety Education

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 43 would phase in a requirement that boaters take an approved boating safety course before operating a vessel in North Carolina. The bill is a recommendation of the Joint Select Committee on Boating Safety Education.***

[As introduced, this bill was identical to H39, as introduced by Reps. Wray, Wilkins, Williams, Faison, which is currently in House Judiciary III.]

CURRENT LAW: Current law does not require boating safety education for individuals prior to operating a boat in North Carolina, but it does require persons between the ages of 14 and 16 to take a boating safety education course prior to operating a jet ski, unless he or she is accompanied by a person age 18 or older who physically occupies the watercraft (G.S. 75A-13.3).

BILL ANALYSIS: ***Section 1*** of Senate Bill 43 would add a new section to the Boating Safety Act (Article 1 of Chapter 75 of the General Statutes). New section G.S. 75A-16.2 would require all persons operating a vessel with a 10 horsepower or greater motor to comply with the boating safety education requirements set forth in the section.

Compliance with the boating safety education requirements.

Compliance with the requirements of the section would be attained by:

- Completing and passing a boating safety course given by the Wildlife Resources Commission (WRC) or a course approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the WRC.
- Testing out by passing a proctored equivalency exam.
- Possessing a valid or expired Coast Guard license.
- Possessing a State-approved, nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number to the purchaser of a boat.
- Possessing a rental/lease agreement from a boat rental business listing the person as the authorized operator of the boat.
- Properly displaying dealer registration numbers during demonstration of the boat.
- Operating the vessel under the direct supervision of a person 18 years of age or older who complies with the requirements of the statute.
- Showing that they are not a resident, are temporarily in the State boating for a period of 90 days or less, and that they meet the boating safety education requirements of their home state.
- Being a registered commercial fisherman or under the direct supervision of a registered commercial fisherman while operating the commercial fisherman's boat.

A person who has to assume the operation of a vessel due to illness or the physical impairment of the original operator would not have to comply with these requirements to return the boat to shore to provide assistance or care for the operator.

A person operating a vessel with a 10 horsepower or greater motor would be required to present a certification card or other proof of compliance with the section if requested by a law enforcement officer.

Phase in of education requirement.

Enforcement of the boating safety education requirement would be phased in according to the following schedule:

- Vessel operators 20 years or younger — starting July 11, 2011.
- Vessel operators 30 years of younger — starting July 11, 2012
- Vessel operators 40 or younger — starting July 11, 2013
- Vessel operators 45 or younger — starting July 11, 2014
- Vessel operators 50 or younger — starting July 11, 2015
- All vessel operators — starting July 11, 2016

Penalties

Persons who violate the act would be guilty of an infraction and subject to a penalty of $100 and no court costs for each violation. A person could not be convicted of a violation if the person produces in court a boating safety education certification card or proof that the person has taken and passed a course in compliance with the requirements of this section.

Preemption

Local governments would not be authorized to enact ordinances or rules relating to boating safety education, and this act would preempt all existing ordinances or rules.

Personal Watercraft

Section 2 of the bill would amend G.S. 75 A-13.3 to provide that the qualifying person accompanying a person between the ages of 14 and 16 on a jet ski must be in compliance with the boating safety education requirements. A person operating a jet ski who is between the ages of 14 and 16 would also be able to comply with boating safety education requirements in any of the ways authorized by this act.

EFFECTIVE DATE: The act would be effective when it becomes law and enforcement would take place in accordance with the phase in of the program.

Barbara Riley, counsel to the House Wildlife Resources Committee, substantially contributed to this summary.

S43-SMSU-49(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 654

Short Title:	Create Exemption/Size-Weight for Sage Haulers.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE AN EXEMPTION FOR SIZE AND WEIGHT RESTRICTIONS OF HAULERS OF SAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116(d) reads as rewritten:

"(d) Maximum Length. – The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(1) Except as otherwise provided in this subsection, a single vehicle having two or three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.

(2) Trucks transporting unprocessed cotton from farm to ~~gin~~ gin, or unprocessed sage from farm to market shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.

(3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors."

SECTION 2. G.S. 20-118(k) reads as rewritten:

"(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton ~~gin~~ gin, or sage to market, may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 50,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures."

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 654:
Create Exemption/Size-Weight for Sage Haulers

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 654 would create an exemption to maximum length and weight restrictions for vehicles transporting unprocessed sage from farm to market.

[As introduced, this bill was identical to H838, as introduced by Rep. Spear, which is currently in House Transportation.]

CURRENT LAW: Under general law applicable to motor vehicles, a vehicle with two or three axles may not exceed 40 feet in length.

The maximum tandem-axle weight for a vehicle operating without a special permit is 38,000 lbs. However, the Department of Transportation is authorized to establish light-traffic roads where the maximum weight is restricted further when the road is inadequate to carry and will be injuriously affected by heavier vehicles.

BILL ANALYSIS: Senate Bill 654 would create an exception to the current law on length of vehicles, increasing the maximum length of a vehicle transporting sage from farm to market from 40 feet to 50 feet.

The bill would also create an exception to the current law on weight of vehicles, increasing the maximum tandem-axle weight of a vehicle transporting sage from farm to market from 38,000 lbs. to 50,000 lbs. In addition, the vehicle would be able to operate on roads designated as light-traffic roads only from the vehicle's point of origin on a light-traffic road to the nearest State road that is not a light-traffic road. The weight exception would only apply from September 1 through March 1 of every year.

[The bill would create the same exceptions for vehicles transporting sage from farm to market as the exceptions that currently exists for vehicles transporting unprocessed cotton from farm to gin.]

EFFECTIVE DATE: The act would be effective October 1, 2009.

S654-SMSU-47(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 660
PROPOSED HOUSE COMMITTEE SUBSTITUTE S660-CSRG-11 [v.3]

4/27/2009 4:57:21 PM

Short Title: Auto Insurance/Diminution in Value. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF DETERMINING PROPERTY DAMAGES AS A PART OF MOTOR VEHICLE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 is amended by adding a new subsection to read:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

...

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For such claims, the policy shall provide that if a claimant asserts a claim for property damage to a motor vehicle and if the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident, on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered select the umpire. The appraisers shall then submit their differences to the umpire. The umpire shall then prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers, or the report of the umpire, when filed with the insurer shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. If the report is rejected, the report shall not be admissible as evidence in any subsequent proceeding. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a motor damage appraiser licensed by the Department of Insurance.

...."

SECTION 2. G.S. 7A-292 is amended by adding a new subdivision to read:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

...

(15) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1)."

SECTION 3. This act becomes effective January 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

SENATE BILL 660:
Auto Insurance/Diminution in Value

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Rucho	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S660-CSRG-11		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 660 amends G.S. 20-279.21 by adding a new subsection to provide a procedure for determining the amount of damage to a motor vehicle resulting from the difference in fair market value of the vehicle immediately before and immediately after an accident. This subsection only applies when liability for coverage is not in dispute.***

This procedure would typically be used for third party claims by a driver who was not at fault against the insurer of a driver who was liable for damages resulting from an accident. As stated above, the procedure would be used only when liability for coverage for the claim is not in dispute.

[As introduced, this bill was identical to H893, as introduced by Reps. Justice, Grady, which is currently in House Judiciary III, if favorable, Insurance.]

CURRENT LAW: 11 NCAC 4.0421 provides that "if a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle."

BILL ANALYSIS: Section 1 of the bill amends G.S. 20-279.21, *"Motor vehicle liability policy" defined*, to provide an alternative method for determining motor vehicle property damage when coverage for the claim is not in dispute.

Specifically, the bill provides that, if the parties fail to agree as to the difference in fair market value of the vehicle immediately before and immediately after the accident, on the written demand of the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other party of the appraiser within 20 days of the written demand. The appraisers may then appraise the loss. If the appraisers fail to agree, the appraisers shall select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree on an umpire within 15 days, the claimant or the insurer may request a magistrate in the county where the vehicle is registered to select the umpire. The appraisers must then submit their differences to the umpire and the umpire shall file a report determining the amount of the loss. The umpire may not award damages that are higher or lower than the determinations of the appraisers. The umpire may not make a determination as to the liability or the existence of coverage.

Either party has 15 days to reject the report. If the report is not rejected, it shall be binding upon the parties. If rejected, the report is not admissible as evidence in any subsequent proceeding.

Each appraiser shall be paid by the party selecting the appraiser. The expenses of appraisal and the umpire shall be paid equally by the parties.

Section 2 gives a magistrate the power to appoint an umpire as provided in Section 1 of the Proposed Committee Substitute.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 660 becomes effective January 1, 2010 and applies to policies issued or renewed on or after that date.

BACKGROUND: G.S. 20-71.4(a) provides that it is Class 2 misdemeanor to "transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle."

S660-SMRG-19(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 686

Short Title:	Electronic Reporting of Abandoned Property.	(Public)
Sponsors:	Senators Foriest; Apodaca, Atwater, Bingham, Brunstetter, Forrester, and Rouzer.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE ELECTRONIC FILING OF ABANDONED PROPERTY REPORTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-60(a) reads as rewritten:

"(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting less than 50 property owner records shall file the report in paper form or may, at their option, file the report in such format and electronic media as prescribed by the Treasurer. Holders reporting 50 or more property owner records shall file the report in a format prescribed by the National Association of Unclaimed Property Administrators (NAUPA) or in a format approved by the Treasurer, and on nationally and commercially recognized electronic media, which shall be provided upon request of the holder and made available on an Internet Web site. In addition, all holders filing electronically shall provide an owner detail report, in .pdf file format or paper copy, together with the affidavit required by subsection (f) of this section."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 686:
Electronic Reporting of Abandoned Property

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 686 would require the holder of abandoned property with fifty or more owner records to file electronically with the State Treasurer. The bill would allow holders with less than fifty property owner records to file electronically and to allow all holders who file reports electronically to also file a signed affidavit electronically.***

CURRENT LAW:

Under current law, a holder of abandoned property is required to file a report with the Treasurer concerning the property. The report must include:

1. A description of the property.
2. Identifying information about the property owner if the property value is $50.00 or more, except for traveler's checks and money orders.
3. An aggregated amount of items valued under $50.00 each.
4. In the case of an annuity or life insurance policy valued at $50.00 or more, the name and address of the insured and the beneficiary.
5. The date the property became payable and the date of the last communication with the owner.
6. Other information deemed necessary by the Treasurer.

The holder of the property must also file an affidavit that the holder has made a good faith effort to locate the apparent owner as provided by law.

BILL ANALYSIS:

Senate Bill 686 requires that holders who report 50 or more property owner records must file the report electronically in a format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically, and any holder who files the report electronically may also file the signed affidavit electronically.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S686-SMRO-38(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 780
PROPOSED COMMITTEE SUBSTITUTE S780-CSRC-11 [v.1]

4/20/2009 7:45:15 PM

Short Title: Struc. Settlement Annuities/Ins. Guar. Assn. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND COVERAGE UNDER THE INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO STRUCTURED SETTLEMENT ANNUITIES FOR MATTERS INVOLVING PERSONAL INJURY OR ILLNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-16 is amended by adding a new subdivision to read:

"(17a) 'Structured settlement annuities' means any contracts or certificates for annuities issued to fund, in whole or in part, a settlement agreement for a matter involving personal injury or illness, including any settlement agreement permitted under Chapter 97 of the General Statutes."

SECTION 2. G.S. 58-62-21(a) reads as rewritten:

"**§ 58-62-21. Coverage and limitations.**

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

(1) To persons other than persons specified in subdivisions (3) and (4) of this subsection who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this ~~subsection, and~~ subsection;

(2) To persons other than persons specified in subdivisions (3) and (4) of this subsection who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the ~~associations.~~associations;

(3) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside; and

(4) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are not residents of this State, but only if all of the following conditions are met:

a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article; and

b. Neither the payees (or beneficiaries of payees if the payees are deceased) nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside."

SECTION 3. This act is effective when it becomes law and applies to claims submitted to the Insurance Guaranty Association on or after that date.

SENATE BILL 780:
Struc. Settlement Annuities/Ins. Guar. Assn

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 20, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S780-CSRC-11		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 780 would expand the protection against defaulting insurers under the Life and Health Insurance Guaranty Association Act to include North Carolina residents who settle claims for personal injury or illness under an agreement funded at least in part by an annuity, regardless of whether the owner of the annuity contract is a State resident.***

The PCS would also extend protection to non-residents who settle their claims for personal injury or illness under agreements funded by annuities, if the following conditions are met:

> ***1) no coverage is offered by the insurance guaranty association of the state in which the payee or the contract owner reside, and***
>
> ***2) the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association.***

[As introduced, this bill was identical to H889, as introduced by Reps. Haire, Love, Blue, Faison, which is currently in House Judiciary III.]

CURRENT LAW: The Life and Health Insurance Guaranty Association Act, codified as Article 62 of Chapter 58 of the General Statutes, provides protection to eligible persons against defaults by issuers of certain life and health insurance policies and annuity contracts, by creating an association of insurers responsible for fulfill the obligations of the defaulting insurer, subject to certain limitations.

Currently, the Act protects owners of annuity contracts issued to fund structured settlement agreements who reside in this State at the time when the issuing insurer is determined to be delinquent. If the contract owner is a non-resident, coverage is provided only if:

- the issuing insurer is domiciled in North Carolina and never held a license in the state where the contract owner resides, and
- the state where the contract owner resides has an association similar to North Carolina's Life and Health Insurance Guaranty Association but the contract owner is not eligible for coverage by that association.

G.S. 58-62-21(b)(2).

Currently, the Act limits its coverage to the lesser of the amount due under the annuity issued by the defaulting insurer or $300,000.00 with respect to any one individual.

BILL ANALYSIS: Under a structured settlement, the funding annuity is issued to someone other than the person whose claim is being settled. Under current law, if a North Carolina resident settles a personal injury or workers compensation claim by means of a structured settlement, and if the entity to whom the funding annuity is issued is not a resident of North Carolina, the Act does not provide coverage in the event that the annuity issuer becomes unable to meet its contractual obligations.

The PCS would provide coverage to payees under annuities issued to fund structured settlements regardless of whether the owner of the annuity contract is a resident of this State, where the payee is a resident of North Carolina at the time the issuer of the annuity is determined to be unable to meet its contractual obligations.

If the payee under a structured settlement annuity is not a resident of this State at the time the annuity issuer is determined to be unable to meet its contractual obligations, the PCS would provide coverage only if both of the following conditions are met:

- the contract owner is a resident of this State, or if not a resident of this State, the insurer issuing the annuity is domiciled in North Carolina and the contract owner's state of residence has an association similar to this State's association; and
- no coverage is offered by the insurance guaranty association of the state(s) in which the payee or the contract owner reside

By expanding the class of covered persons to include annuity payees who do not own the annuity contracts, the $300,000.00 limit under this section would apply to such individuals.

EFFECTIVE DATE: This act is effective when it becomes law and would apply to claims submitted to the Insurance Guaranty Association on or after that date.

S780-SMRC-15(CSRC-11) v1

SENATE BILL 981

Short Title:	Mortgage Guaranty Insurance Revisions.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO GIVE THE COMMISSIONER OF INSURANCE DISCRETION TO ALLOW A MORTGAGE GUARANTY INSURER TO WAIVE THE MINIMUM POLICYHOLDERS POSITION REQUIREMENT UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-10-125 reads as rewritten:

"**§ 58-10-125. Policyholders position and capital and surplus requirements.**

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position of not less than one twenty-fifth of the insurer's aggregate insured risk outstanding. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) ~~If~~ Subject to the provisions of subsections (i) through (l) of this section, if a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.

(c) A mortgage guaranty insurer shall at all times maintain capital and surplus in the greater of the amount required by G.S. 58-7-75 or or subsection (a) of this ~~section.~~section, unless a waiver is obtained by the mortgage guaranty insurer pursuant to subsection (i) of this section.

(d) through (h) Repealed by Session Laws 2007-127, s. 5, effective July 1, 2007.

(i) The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.

(j) In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs, all of the following factors, among others, may be considered:

(1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

(2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.

(3) The nature and extent of the mortgage guaranty insurer's reinsurance program.

(4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

(5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.

(6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.

(7) The adequacy of the mortgage guaranty insurer's reserves.

(8) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

(10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.

(11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.

(12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

(k) The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

(l) Any waiver shall be (i) for a specified period of time, not to exceed two years unless the Commissioner determines that a longer period is reasonable and justified under the circumstances, and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 981:
Mortgage Guaranty Insurance Revisions

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 24, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 981 authorizes the Commissioner of Insurance to waive the minimum policyholders position financial requirements for mortgage guaranty insurers if the Commissioner finds that the insurer's policyholders position is reasonable in relationship to the insurer's risk and is adequate to meet the insurer's financial needs, as determined by certain factors listed in the bill.***

[As introduced, this bill was identical to H1150, as introduced by Rep. Holliman, which is currently in House Financial Institutions, if favorable, Insurance.]

BACKGROUND: Mortgage guaranty insurance, also known as private mortgage insurance provides coverage for losses incurred by a mortgage lender resulting from a borrower's failure or inability to make mortgage payments. Typically, mortgage guaranty insurance is purchased by the borrower for the protection of the lender.

According to the Department of Insurance, more guaranty insurers are domiciled in NC than any other state in the country.

CURRENT LAW: G.S. 58-10-125 requires guaranty insurers to maintain at all times a minimum policyholders position of not less than 1/25th of the insurers outstanding risk. The policyholders position is the sum of the contingency reserve of the insurer and the policyholders' equity (the insurer's net worth). If the insurer fails to maintain the minimum policyholders position, it must cease transacting new business until it reaches the required minimum position.

BILL ANALYSIS: Senate Bill 981 authorizes the Commissioner to waive the minimum policyholders position financial requirements if the Commissioner finds that the insurer's policyholders position is reasonable in relationship to the insurer's risk and is adequate to meet the insurer's financial needs. In determining whether an insurer's policyholders position is reasonable and adequate, the Commissioner may consider, at a minimum, the following:

- The size of the mortgage guaranty insurer as measured by assets, capital, surplus reserves, premiums, and other criteria.
- The extent to which its business is diversified across time, geography, credit quality, etc..
- The nature and extent of its reinsurance.
- The quality diversification and liquidity of its assets and investments.
- The historical and forecasted trend in its policyholders position.
- The policyholders position of comparable companies.
- The adequacy of its reserves.
- The quality and liquidity of investment in affiliates.
- The quality of its earnings.
- An independent actuary's opinion of its policyholders position.

- Actual and potential capital contributions.
- Historical and forecasted trends in its aggregate risk.

Under the bill, a guaranty insurer must request a waiver of the statutory minimum policyholders position in writing at least 90 days in advance of the date the insurer expects to exceed the required minimum policyholders position.

EFFECTIVE DATE: Senate Bill 981 becomes effective July 1, 2009.

S981-SMRG-18(e1) v2

SENATE COMMERCE COMMITTEE
Thursday, April 30, 2009 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m., Thursday, April 30, 2009, in Room 1027 of the Legislative Building. Senator R.C. Soles presided. Twenty-four members of the committee were present. Brandon Crady of Winston-Salem, Caleb Pletcher of Catawba, Brianna Crady of Winston-Salem and Kevin Ellis of Raleigh served as pages.

S.B. 43 – Require Boating Safety Education.

Senator Jones was recognized to explain the bill which improves boating safety by requiring boating safety education prior to operating a vessel with a motor of ten horsepower or greater, as recommended by the Joint Select Committee on Mandatory Boating Safety Education. Chris Heubner, an officer with the NC Wildlife Commission, was recognized to answer questions and speak in favor of the bill. Senator Jenkins offered an amendment to establish an age exemption and moved for its adoption. The motion carried. Senator Foriest moved to adopt the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 448 – Self Service Storage.

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS amends the laws regulating self-service storage facilities. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 1029 – PEO Amendments.

Senator Bingham was recognized to explain the bill which amends the North Carolina Professional Employer Organization Act concerning bonding provisions and maintenance of employee benefits. Senator Rand offered a technical amendment and moved for its adoption. The motion carried. Rose Williams, the Department of Insurance's legislative liaison, was recognized to answer questions. Ed Turlington, representing the National Association of Professional Employer Organizations, was recognized to speak in favor of the bill. Senator Stevens moved for a favorable report of the PCS as amended and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 460 – Commercial Dog Breeders.

Senator Davis was recognized to explain the bill. Senator Vaughan moved to adopt the PCS for discussion and the motion carried. The PCS regulates the commercial breeding of dogs. Justin Sealey, Wayne County Animal Control, was recognized to speak in favor of the bill and explain a problem "puppy mill" in his county. Dr. Lisa Dixon, a Charlotte veterinarian, was recognized to speak in favor of the bill and explain puppy mill health issues. Henri McClees, lobbyist for the NC Sporting Dog Association, was recognized to speak in opposition to the bill. Cindy

Stansell, lobbyist for the NC Federation of Dog Clubs, Inc., was recognized to speak in opposition to the bill. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS, the summary, Senator Davis's handout and a handout from the Pet Industry Joint Advisory Council is attached.

The meeting adjourned at 10:06 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, May 04, 2009

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

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

S.B.	**43**	Require Boating Safety Education.	
		Draft Number:	85205
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	**448**	Self-Service Storage Facilities.	
		Draft Number:	85206
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	**460**	Commercial Dog Breeders.	
		Draft Number:	75248
		Sequential Referral:	Finance
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	**1029**	PEO Amendments.	
		Draft Number:	75247
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

Senate Commerce Committee
Thursday, April 30, 2009, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 43	Require Boating Safety Education.	Sen. Jones
SB 448	Self-Service Storage Facilities.	Sen. Hoyle
SB 460	Commercial Dog Breeders.	Sen. Davis
SB 476	Create Titling Categories-Replica/Street Rod.	Sen. East
SB 654	Create Exemption/Size-Weight for Sage Haulers.	Sen. Jones
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 686	Electronic Reporting of Abandoned Property.	Sen. Foriest
SB 820	Create New Titling Categories.	Sen. Hartsell
SB 889	Utilities/Carrier of Last Resort.	Sen. Vaughan
SB 981	Mortgage Guaranty Insurance Revisions.	Sen. Jenkins
SB 1029	PEO Amendments.	Sen. Bingham

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	2134 S. CHAVIS Rd Raleigh NC 27546
James Ray	13116 Adona Ln Wake Forest N.C 27587
Michelle Lennon	Durham, NC 27703 Durham Kennel Club
Hailey Queen	400 Hillstone Dr. Raleigh, NC 27615
Reg Cook	1706 Medfield Rd. Raleigh NC. 27607
Patty VanSickler	8361 Timber Crest Dr. # 101 Raleigh, NC 27617 Siberian Husky Club - Central NC
Jennifer Clark	1113 Sweet Spot Circle Morrisville, NC 27560
Pete Deschenes	136 Holly Point Littleton, NC 27850
Paul Mahoney	CAPSTAT, INC RALEIGH
Thomas H. Goffe	1935 Stevens Chapel Rd. Smithfield, NC 27537
Joel Patterson	RMIC - Winston Salem

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Teresa Vila	FHC 3428 NC Hwy 39 N Louisburg NC 27549 (Franklin Co)
Kathy Wosnak	Central Carolina Dalmatian Club 3208 Neuse Banks Ct. Wake Forest, NC 27587 (Wake Co)
Chester Lowder	NC Farm Bureau, P.O. Box 27766 Raleigh NC 27611
Stu Brown	EMBARQ
Jay Bayette	NC Farm Bureau
BG B	N
Jim Hardi	GRADY WHITE BOATS Greenville, NC
Jennifer Cohen	IFNC
David Stollen	State Farm
Barbara Wood	Public 133 Jamison Woods Ln Apex NC
Ed Finch	RPMAC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gordon Payne	MWC
John Tolbert	Genworth Financial
[illegible] Mangum	NCSSA
Rob Mann	NCSSA
Kim Alborn	Puppy Mill Awareness Day
Scott Alborn	"
Amanda Arrington	HSUS
Guilyn Hawthorne	private person
Daniel Baum	K+L GATES
MT Burnette	Volunteer
Bill Tibbens	Farmers Ins. Group

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dianna Downey	NCUC Public Staff
Lucy Edmondson	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Miskew	Capstrat
Anthony Ronlette	NRA
Robert Paschal	Young, Moore
Will Flowers	intern
Calley Gerber	Gerber Animal Law Center 4601 Six Forks Rd, Suite 500 Raleigh, NC 27609
Matt Brown	ATT
Brittan Allen	Allen Law Offices, PLLC
Ben Scoggin	KG
Marty Bocock	EMBARQ
Wendy Kelly	S2D Wicker
Joe Lamon	S2D Wicker

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Crystal Martin	Republic Mortgage Inc Winston-Salem NC
Joyce Howard	6225 Cattail Rd Elm City, NC 27822
Preston Howard	MCIC
Shammy Robertson	TWC
Debra DeCamillis	UNC-IOG
Bill Cowan	3915 Cash Dr. Winston-Salem 27107
Rick McElroy	1333 Four Winds Dr. Raleigh, NC 27615
Sally E Sasser	898 NC Hwy 581 S Goldsboro, NC 27530
Jacqui Pearce	3221 Marie Dr. Raleigh NC 27604
Mike Carrington	3221 Marie Dr. Raleigh NC 27604
Marsha Moore	879 Cheney Rd Zebulon NC (Franklin Co.)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dan Hoper	1718 Trinity Rd, Raleigh, NC 27607
Ellen Ryan	1718 TRINITY RD, Raleigh, NC 27607
Lynn Cope	943 Randall Barron Rd, LaGrange N.C 28551
Sharon McCabe	1004 Sleepy Creek Rd. Dudley, NC
Liz Goodman	2199 Government Rd. Clayton, NC 27520
John McMillan	NFIB
Susan Valcarcel	NW
Doris Weaver	NC CWA Political Council
Trish Wright	self
W.T. Bolton	NCSHP, RALEIGH
Paul Sherman	AJCFB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Dail	N.C. Running Hound Assoc. V.P. 370 Hudnell Rd. Fuquay, NC 27526
Patricia Baheri	Raleigh Kennel Club, Pres. P.O. Box 31708, Raleigh 27622
Ursula M. Walsh	Moore Co. Kennel Club my address - 1600 Morganton Rd M-2 Pinehurst NC 28374
A. SOLARI	DST
Ella Hanton	DST
Ray Mandrue	NCDOI
Jeanne Green	Genworth Financial
Amanda Snowden	Administaff 19001 Crescent Springs Drive Kingwood, TX 77339
ADAM PEER	NATIONAL ASSOC OF PROFESSIONAL EMPLOYER ORGANIZATIONS 707 ST. ASAPH ST. ALEXANDRIA, VA 22314

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
WILLIAM G. PFEIFFER	GERMAN SHEPHERD DOG CLUB OF GR RALEIGH RALEIGH KENNEL CLUB
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CINDY STANSELL	North Carolina Federation of Dog Clubs Rocyn@embarqmail.com
Sylvia McClees	McClees Consulting, Inc
LARRY SORENSON	CENTRAL CAROLINA DACHSHUND
Murphy Woolard	Washington N.C. 27889
Walter Sawyer	Pantego N.C.
JERRY SAWYER	3186 TERRA CEIA RD. PANTEGO 27860 Pantego NC
Ralph Smith	2302 FALLING CREEK RD. KINSTON N.C. 28504
Carlton (Pete) WARREN	5002 GRIFTON-HUGO RD GRIFTON N.C. 28530
Ronnie Hill	502 Bennetts Ridge Rd Mt. Olive N.C. 28365

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 43*

Short Title:	Require Boating Safety Education.	(Public)
Sponsors:	Senators Jones; and Preston.	
Referred to:	Commerce.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY REQUIRING BOATING SAFETY EDUCATION PRIOR TO OPERATING A VESSEL WITH A MOTOR OF TEN HORSEPOWER OR GREATER, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON MANDATORY BOATING SAFETY EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes is amended by adding a new section to read:

"**§ 75A-16.2. Boating safety education required.**

(a) No person shall operate a vessel with a motor of 10 horsepower or greater on the public waters of this State unless the operator has met the requirements for boating safety education in accordance with the age provisions established in subsection (c) of this section.

(b) A person shall be considered in compliance with the requirements of boating safety education if the person does one of the following:

(1) Completes and passes the boating safety course instituted by the Wildlife Resources Commission under G.S. 75A-16.1 or another boating safety course that is approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the Wildlife Resources Commission;

(2) Passes a proctored equivalency examination that tests the knowledge of information included in the curriculum of an approved course;

(3) Possesses a valid or expired license to operate a vessel issued to maritime personnel by the United States Coast Guard;

(4) Possesses a State-approved nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number for the vessel, if the boat was new or was sold with a transfer of ownership;

(5) Possesses a rental or lease agreement from a vessel rental or leasing business that lists the person as the authorized operator of the vessel;

(6) Properly displays Commission-issued dealer registration numbers during the demonstration of the vessel;

(7) Operates the vessel under onboard direct supervision of a person who is at least 18 years of age and who meets the requirements of this section;

(8) Demonstrates that he or she is not a resident, is temporarily using the waters of this State for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state or nation of residency;

(9) Has assumed operation of the vessel due to the illness or physical impairment of the initial operator, and is returning the vessel to shore in order to provide assistance or care for the operator; or

(10) Is registered as a commercial fisherman or a person who is under the onboard direct supervision of a commercial fisherman while operating the commercial fisherman's boat.

Any person who operates a vessel with a motor of 10 horsepower or greater on the waters of this State shall, upon the request of a law enforcement officer, present to the officer a certification card or proof that the person has complied with the provisions of this section.

(c) Enforcement of the requirement for boating safety education shall be phased in as follows:

(1) Vessel operators 20 years of age or younger shall meet the requirements by July 11, 2011;

(2) Vessel operators 30 years of age or younger shall meet the requirements by July 11, 2012;

(3) Vessel operators 40 years of age or younger shall meet the requirements by July 11, 2013;

(4) Vessel operators 45 years of age or younger shall meet the requirements by July 11, 2014;

(5) Vessel operators 50 years of age or younger shall meet the requirements by July 11, 2015;

(6) All vessel operators, regardless of age, shall meet the requirements by July 11, 2016.

(d) Any person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction, as provided in G.S. 14-3.1, and the court shall assess a penalty of one hundred dollars ($100.00) and no court costs for each violation. A person may not be convicted of violating this section if, when tried for the offense, the person produces in court a certification card or proof that the person has completed and passed a boating safety course in compliance with subdivision (b)(1) of this section.

(e) No unit of local government shall enact any ordinance or rule relating to boating safety education, and this law preempts all existing ordinances or rules."

SECTION 2. G.S. 75A-13.3(b) reads as rewritten:

"§ 75A-13.3. Personal watercraft.

...

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the ~~watercraft;~~ watercraft and who is in compliance with G.S. 75A-16.2; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boating safety certification card issued by the ~~Commission or~~ Commission, proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators ~~(NASBLA);~~ (NASBLA), or proof of other boating safety education in compliance with G.S. 75A-16.2; and (ii) produces that identification and ~~certification card~~

proof upon the request of an officer of the Commission or local law enforcement agency.

...."

"**SECTION 3.** This act is effective when it becomes law, and enforcement shall take effect as provided in G.S. 75A-16.2(c), as enacted in this act.

SENATE BILL 43:
Require Boating Safety Education

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 28, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 43 would phase in a requirement that boaters take an approved boating safety course before operating a vessel in North Carolina. The bill is a recommendation of the Joint Select Committee on Boating Safety Education.***

[As introduced, this bill was identical to H39, as introduced by Reps. Wray, Wilkins, Williams, Faison, which is currently in House Judiciary III.]

CURRENT LAW: Current law does not require boating safety education for individuals prior to operating a boat in North Carolina, but it does require persons between the ages of 14 and 16 to take a boating safety education course prior to operating a jet ski, unless he or she is accompanied by a person age 18 or older who physically occupies the watercraft (G.S. 75A-13.3).

BILL ANALYSIS: ***Section 1*** of Senate Bill 43 would add a new section to the Boating Safety Act (Article 1 of Chapter 75 of the General Statutes). New section G.S. 75A-16.2 would require all persons operating a vessel with a 10 horsepower or greater motor to comply with the boating safety education requirements set forth in the section.

Compliance with the boating safety education requirements.

Compliance with the requirements of the section would be attained by:

- Completing and passing a boating safety course given by the Wildlife Resources Commission (WRC) or a course approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the WRC.
- Testing out by passing a proctored equivalency exam.
- Possessing a valid or expired Coast Guard license.
- Possessing a State-approved, nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number to the purchaser of a boat.
- Possessing a rental/lease agreement from a boat rental business listing the person as the authorized operator of the boat.
- Properly displaying dealer registration numbers during demonstration of the boat.
- Operating the vessel under the direct supervision of a person 18 years of age or older who complies with the requirements of the statute.
- Showing that they are not a resident, are temporarily in the State boating for a period of 90 days or less, and that they meet the boating safety education requirements of their home state.
- Being a registered commercial fisherman or under the direct supervision of a registered commercial fisherman while operating the commercial fisherman's boat.

A person who has to assume the operation of a vessel due to illness or the physical impairment of the original operator would not have to comply with these requirements to return the boat to shore to provide assistance or care for the operator.

A person operating a vessel with a 10 horsepower or greater motor would be required to present a certification card or other proof of compliance with the section if requested by a law enforcement officer.

Phase in of education requirement.

Enforcement of the boating safety education requirement would be phased in according to the following schedule:

- Vessel operators 20 years or younger — starting July 11, 2011.
- Vessel operators 30 years of younger — starting July 11, 2012
- Vessel operators 40 or younger — starting July 11, 2013
- Vessel operators 45 or younger — starting July 11, 2014
- Vessel operators 50 or younger — starting July 11, 2015
- All vessel operators — starting July 11, 2016

Penalties

Persons who violate the act would be guilty of an infraction and subject to a penalty of $100 and no court costs for each violation. A person could not be convicted of a violation if the person produces in court a boating safety education certification card or proof that the person has taken and passed a course in compliance with the requirements of this section.

Preemption

Local governments would not be authorized to enact ordinances or rules relating to boating safety education, and this act would preempt all existing ordinances or rules.

Personal Watercraft

Section 2 of the bill would amend G.S. 75 A-13.3 to provide that the qualifying person accompanying a person between the ages of 14 and 16 on a jet ski must be in compliance with the boating safety education requirements. A person operating a jet ski who is between the ages of 14 and 16 would also be able to comply with boating safety education requirements in any of the ways authorized by this act.

EFFECTIVE DATE: The act would be effective when it becomes law and enforcement would take place in accordance with the phase in of the program.

Barbara Riley, counsel to the House Wildlife Resources Committee, substantially contributed to this summary.

S43-SMSU-49(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 43*

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

S43-ASU-9 [v.2]

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

Date _____ ,2009

Senator Jenkins

moves to amend the bill on page 2, lines 6-7, by inserting between the lines a new subdivision to read:

"(11) Provides proof that he or she was born prior to January 1, 1984."; and

on page 2, lines 10-23, by deleting the lines and renumbering the remaining subsections accordingly; and

on page 3, lines 4-5, by rewriting the lines to read:

"**SECTION 3.** This act becomes effective May 1, 2010."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 448
PROPOSED COMMITTEE SUBSTITUTE S448-CSRO-17 [v.1]

4/22/2009 7:06:50 PM

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.

SENATE BILL 448:
Self-Service Storage Facilities

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 29, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S448-CSRO-17		Committee 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 PCS makes several changes to the bill, including:

- ***Removes the provision setting the presumed maximum value of the property at the amount contained as the limit in the rental agreement.***
- ***Clarifies that when a motor vehicle is towed, the lienor is not liable for any damages that occur after the tower takes possession.***
- ***Removes the provision authorizing an owner to deny access to the occupant after the debt is one day past due.***
- ***Clarifies that the owner is liable only for damage caused by the intentional acts or negligence of the owner or the owner's employees.***

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, and 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.
- 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.
- Providing that the care, custody, and control of the property remains vested in the occupant until the property is sold. The owner is a commercial landlord who rents space and 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-SMRO-53(CSRO-17) v1

SENATE BILL 1029

Short Title:	PEO Amendments.	(Public)
Sponsors:	Senators Bingham, Hoyle; and Hartsell.	
Referred to:	Commerce.	

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 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 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.

SENATE BILL 1029: PEO Amendments

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 29, 2009
Introduced by:	Sen. Bingham	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

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 who were licensed on or after that date.***

CURRENT LAW: Under the current law, all applicants for a professional employer license must 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.

BILL ANALYSIS: 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.

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.

EFFECTIVE DATE: Senate Bill 1029 is effective when it becomes law.

BACKGROUND: A PEO is defined under a 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.

S1029-SMRG-26(e1) v3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1029

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

S1029-ARG-14 [v.1]

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

Date _____ ,2009

Senator Rand

moves to amend the bill on page 1, line 9, by inserting between the word "or" and the word "as" the words "other items";

and on page 1, line 13, by inserting between the word "or" and the word "as" the words "other items"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 460*
PROPOSED COMMITTEE SUBSTITUTE S460-CSRO-26 [v.1]

4/29/2009 9:43:53 PM

Short Title: Commercial Dog Breeders. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE COMMERCIAL BREEDING OF DOGS.

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 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 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 reads as rewritten:

"**§ 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, during any 12-month period, maintains 15 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

(5c) "Commercial breeding operation" means the physical location or facility at which a commercial breeder breeds or maintains adult female dogs and their offspring."

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 adult females, 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-30 reads as rewritten:

"**§ 19A-30. Refusal, suspension or revocation of certificate or license.**

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any commercial breeder, public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

(1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;

(2) Willful disregard or violation of this Article or any rules issued pursuant thereto;

(3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

(3a) Failure to comply with the statutes and rules governing commercial breeding operations.

(4) Allowing one's license under this Article to be used by an unlicensed person;

(5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;

(6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, commercial breeding operation, pet shop, or dealer;

(7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;

(8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before- suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this –Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect."

SECTION 5. Article 3 of Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-29.1. License required for commercial breeder; penalty.**

(a) No commercial breeder shall operate in the State without first obtaining a commercial breeders license. Application for a license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be fifty dollars ($50.00) for each license period or part thereof, beginning with the first day of the fiscal year.

(b) Failure of a commercial breeder to obtain a license as set forth in subsection (a) of this section shall constitute a Class 2 misdemeanor. Continued illegal operation after conviction shall constitute a separate offense. Animals found in the possession or custody of an unlicensed commercial breeder shall be subject to immediate seizure and impoundment and upon conviction of the unlicensed commercial breeder, shall become subject to sale or euthanasia in the discretion of the Director."

SECTION 6. Article 3 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; inspections.**

(a) Commercial breeders shall not breed female dogs less than 18 months or more than eight years of age and shall provide adequate veterinary care to the female adult dogs and their offspring. An adult female dog shall not be bred without an annual certification from a licensed veterinarian that the dog is in suitable health for breeding.

(b) Commercial breeding operations shall be subject to inspection by duly appointed employees of the Department or by local animal control officers. In conducting such inspections, the Department employee or local animal control officer may inspect the records of the commercial breeder, the premises where animals are bred and maintained, and any animal used in the breeding program or their offspring. Denial of access to the commercial breeding operation shall be grounds for revocation of the commercial breeders license."

SECTION 7. Article 3 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; disposition of 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 animal or more than a total of one thousand dollars ($1,000.00). The animals in the possession or custody of the commercial breeder shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director, and the failure shall also constitute grounds for revocation of the commercial breeder's license."

SECTION 8. This act becomes effective December 1, 2009, and applies to the commercial breeding of dogs on or after that date.

SENATE BILL 460:
Commercial Dog Breeders

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 29, 2009
Introduced by:	Sen. Davis	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S460-CSRO-26		

SUMMARY: Senate Bill 460 would require persons who are engaged in the commercial breeding of dogs to obtain a license from the Department of Agriculture and Consumer Services (DACS) and to operate in compliance with standards of care to be adopted by the Department.

The Proposed Committee Substitute corrects a citation error.

[As introduced, this bill was identical to H460, as introduced by Reps. Jeffus, Dickson, Harrison, which is currently in Rules, Calendar, and Operations of the House.]

CURRENT LAW:

Article 3 of Chapter 19A of the General Statutes is the Animal Welfare Act. The act requires persons who operate boarding kennels, public auctions, and pet shops or who act as an animal dealer, to obtain a license from the DACS. Persons operating animal shelters are required to obtain a certificate of registration. In addition, those persons operating kennels, public auctions, pet shops, and animal shelters must comply with rules adopted by the Board of Agriculture which provide standards of care, including recordkeeping and transportation, for the animals kept at these facilities. Failure to obtain a license for the operation of a pet shop, kennel, or public auction is a Class 3 misdemeanor with a penalty of no less than $5 and no more than $25. Failure to obtain a license to act as a dealer is a Class 2 misdemeanor. Failure to adequately house, feed, and water animals is a Class 3 misdemeanor and the person shall be subject to a fine of not less than $5 per animal with a total cap of $1,000. In addition, the Department may assess a civil penalty of not more than $5,000 for a violation of the provisions of the article. The Department must consider the degree and extent of harm caused by the violation in assessing the penalty.

BILL ANALYSIS:

Senate Bill 460 adds commercial dog breeders to those operations which are required to obtain a license from DACS and provides that they must operate consistent with standards of care adopted by the Department.

1. G.S. 19A-23 is amended to add definitions of commercial breeder and commercial breeding operation. A commercial breeder is a person, who during any 12 month period, maintains *more than 15 adult female dogs* for the primary purpose of the sale of their offspring as companion animals. A commercial breeding operation is the physical location or facility at which a commercial breeder breeds or maintains adult female dogs and their offspring.

2. G.S. 19A-24 is amended to require the Board of Agriculture to establish standards of care for animals at a commercial breeding operation. The standards are to take into consideration the particular needs of the dogs used in such an operation and include provisions for adequate daily exercise, veterinary care, housing for adult females, females with litters, and housing for weaned puppies.

3. New G.S. 19A-29.1 sets the fee for a commercial breeder's license at $50. Failure to obtain a license is a Class 2 misdemeanor. Animals found in the custody of an unlicensed commercial breeder shall be subject to immediate seizure and impoundment, and on conviction, shall become subject to sale or euthanasia in the discretion of the Director of the Animal Welfare Division.

4. In addition to the standards of care adopted pursuant to G.S. 19A-24, new G.S. 19A-29.2 provides that female dogs less than 18 months of age or more than 8 years shall not be bred. Adult female dogs shall not be bred without an annual certification from a veterinarian that the dog is in suitable health for breeding. Commercial breeding operations will be subject to inspections by employees of the Department or by local animal control officers. Denial of access to the operation is grounds for the revocation of the license.

5. Failure to comply with the statutes and rules governing commercial breeders may result in the refusal to issue, suspension, or revocation of a commercial breeder's license. Failure to obtain a license is a Class 2 misdemeanor and animals in the possession of an unlicensed commercial breeder may be seized and impounded, and if the commercial breeder is convicted, sold or euthanized in the discretion of the Director. Failure to meet the standards of care is a Class 3 misdemeanor and the commercial breeder shall be subject to a fine of not less than $50 per animal or more than a total of $1,000. In the case of failure to meet standards, the animals are also subject to seizure and impoundment, and, if the commercial breeder is convicted, may be sold or euthanized in the discretion of the Director.

EFFECTIVE DATE: The act becomes effective December 1, 2009 and applies to the commercial breeding of dogs on or after that date.

Barbara Riley, counsel to the House Agriculture committee, substantially contributed to this summary.

S460-SMRO-55(CSRO-26) v1

Why Senate Bill 460: The Puppy Mill Bill?

A hunting dog



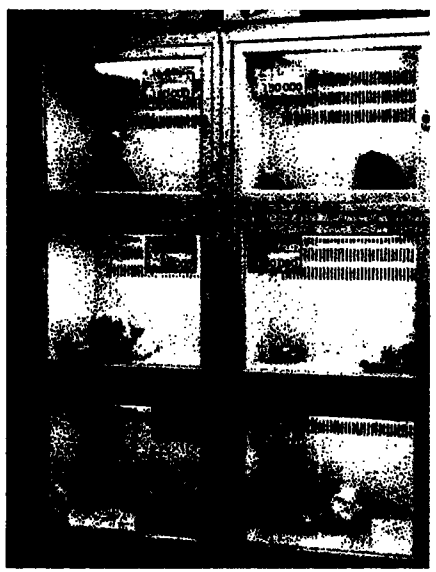
A working dog



A dog rescued from a puppy mill



A pet shop



An animal shelter



A puppy mill



Pet Industry Joint Advisory Council
1220 19th Street, N.W., Suite 400
Washington, DC 20036
(202) 452-1525 - Telephone
(202) 293-4377 - Facsimile

NAME/COMPANY: NC Senate Committee on Commerce

FROM: Michael P. Maddox, Esq.

FAX NUMBER: 919/715-9594

DATE: 4/29/2009 PAGES: (INCLUDES COVER SHEET): 3

Please find attached the following:

PIJAC's testimony regarding NC Senate Bill 460 (To be heard before the Senate Commerce Committee on April 30th).

PIJAC

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TESTIMONY OF PET INDUSTRY JOINT ADVISORY COUNCIL

BEFORE THE COMMITTEE ON COMMERCE

SENATE BILL 460

April 30, 2009

Position: Qualified Opposition

As the world's largest pet trade association, the Pet Industry Joint Advisory Council (PIJAC) appreciates the opportunity to offer this esteemed committee our views on Senate Bill 460. Representing the interests of all segments of the pet industry throughout the United States, PIJAC counts among its thousands of members various associations, organizations, corporations and individuals involved in the commercial pet trade. More specifically, we represent pet breeders, pet product manufacturers, distributors and retailers throughout North Carolina who would be significantly impacted by the legislation before you today.

Let me emphasize that nobody cares more about humane breeding and rearing standards than does PIJAC. We have, for many years, provided a highly respected animal care certification program intended to ensure that employees are well trained in the care of the animals they sell; a program that is widely utilized not only by persons in the commercial pet trade but also shelters and humane societies throughout the country, and one that has even been adopted as a statutory standard. PIJAC has worked closely with the USDA on effective implementation of the Animal Welfare Act for pets since its inception over three decades ago, and has joined hands with state and local agencies to ensure adoption and enforcement of appropriate regulatory standards. Similarly, PIJAC has worked with a number of states that have designed kennel and/or pet store licensure programs. Our association has long been recognized as the voice for a responsible pet trade, and routinely advocates for new statutory standards that are in the best interests of companion animals and the pet-owing public. We also continually seek to advance the voluntary implementation of superior standards in the care, handling and transport of companion animals.

Thus we emphasize again that we support appropriate humane care standards. But we caution against adoption of a dual licensure system that subjects licensees to conflicting legal standards.

As the committee is aware, commercial breeders of dogs and cats for the pet industry are already subject to licensing and inspection pursuant to the Federal Animal Welfare Act. Regulations promulgated under that act provide extensive standards for the breeding, housing, transport and general care of pet animals.

We believe that care should be taken when considering establishment of a dual licensing system for commercial breeders. Only a minority of states has taken this route at all and, when doing so, such states endeavor to fashion a system that will not create conflicting standards between the federal and state licensing schemes. We suggest that the committee should consider whether there is a sufficient basis for directing scarce resources to the state regulation of breeders that are already licensed under federal law.

Notwithstanding the hysteria and hyperbole disseminated by some, professionalism in the pet trade has steadily and consistently increased over the past several years, and the quality of care provided pet animals has improved and continues to do so. Most in the commercial dog trade do a good job. PIJAC is proud of its part in making this happen. At the same time, there is always room for continued improvement, and we recognize there are still those who fail to meet acceptable standards. PIJAC routinely works with legislators and regulators to close this gap, and we would be pleased to provide whatever assistance we might to this committee in furthering that objective.

In the current economic climate, when many in the pet trade are struggling to keep their businesses alive, we urge the committee to carefully evaluate the cost-benefit ratio of imposing additional regulatory burdens on a sector of the market that is already heavily regulated at the federal level. **If the committee determines that imposition of a second licensing scheme is necessary, we respectfully request that Senate Bill 460 be amended by inserting at the end of new Subsection 19A-24(a)(1a) the following language:**

> **"Such standards shall be consistent in all regards with standards established under the federal Animal Welfare Act and regulations promulgated thereunder."**

Thank you greatly for your consideration of our concerns!

Respectfully submitted
Pet Industry Joint Advisory Council
By: Michael P. Maddox, Esq.

ATTENDANCE

Committee: Subcommittee on SB 18 Cemetery Act

NAMES \ DATES	5-4															
Senator Stevens, Chair	✓															
Senator Soles	–															
Senator Vaughan	✓															
Senator Gass	✓															
Senator Stern	✓															
Senator Goodall	–															

VISITOR REGISTRATION SHEET

S. Subcommittee on SB Amend the Cemetery Act — May 4, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO MARY MARCHMAN

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Lobbyist NC Mining Association
Rusty Ingram	NCCA
William W. Haffney	Charlotte Mem. Gdns, Charlotte, NC
Mac McCorkle	Payne Sprull
Bill Carr	Stonemor Partners
Robert Hudson, Jr.	Service Corp. Int / NCCA
DAVID BARNES	Payne Sprull
Vinny Mitka	Administrator, NC Cemetery Comm
Mickey Robins	FCAA Funeral Consumer's Alliance

Handouts

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-CSSU-22 [v.2]

5/1/2009 10:04:18 AM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, AND REQUIRING CEMETERY COMPANIES TO ALLOW THE INTERMENT OF THE PURCHASER OF A PRENEED CONTRACT WHO DIES BEFORE MAKING THE FINAL PAYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount or that the applicant has obtained a performance bond in lieu of the trust account under G.S. 65-66(g) or G.S. 65-70(f)."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64, and that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in certificates of deposit and money market funds in accordance with G.S. 32-71(a). ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the

burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates or both with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(f1) In the event the purchaser dies before final payment is collected, the seller shall allow the purchaser to be interred and shall collect any unpaid balance from the purchaser's estate.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section, but may require that a casket be enclosed within a vault. A cemetery company shall not charge a fee for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year,~~three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

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

SENATE BILL 18:
Amend Cemetery Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 16, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S18-CSSU-22		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Prohibit the Cemetery Commission from approving a change of control of a cemetery company until the applicant provides proof of sufficient merchandise and preconstruction trust accounts or appropriate surety bonds in lieu of those accounts.***
- ***Require that funds in a perpetual care trust account be invested in certificates of deposit and money market funds only.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Require cemetery companies to allow a purchaser to be interred if he or she dies before final payment is collected.***
- ***Prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller.***
- ***Increase from 1 to 3 years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts.***

The PCS also makes several grammatical and technical changes, including updating references to statutes that have been recodified.

BILL ANALYSIS:

Change of control/posting bond in lieu of making deposits to trust accounts. When a person acquires control of a cemetery company or otherwise acts to effectively change the control of a company, the person must apply to the Commission for approval of the change. The PCS would prohibit the Commission from approving the change of control until the applicant provides sufficient evidence that appropriate merchandise and preconstruction trust accounts are being maintained or that appropriate bonds have been obtained in lieu of those accounts. Cemetery companies are required to establish trust accounts for proceeds from preneed contracts for property or services and proceeds from the sale of mausoleums and belowground crypts prior to construction. The accounts must be funded in an amount equal to 60% of proceeds received on contracts. However, companies are allowed to post an acceptable performance bond in lieu of maintaining those merchandise and preconstruction trust accounts.

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. The PCS would amend the law to require that the funds be invested and reinvested only in certificates of deposit and money market funds.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. The PCS would specify that the contract must include the cost for opening and closing each grave space.

Burial when purchaser of preneed contract dies prior to final payment. Current law does not address situations where a purchaser of a preneed contract dies prior to making final payment on the contract. Therefore, the cemetery company may delay the burial until the debt is paid in full. The PCS would require the cemetery company to proceed with the burial and collect any unpaid balance from the purchaser's estate.

Purchase of vaults. The PCS would prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault (an underground receptacle designed to encase and protect a casket) from the cemetery company or any other particular seller. The company would be able to require that a casket be enclosed within a vault but would not be able to charge a fee for delivery or inspection of a vault purchased from another seller.

Extension for completing construction of mausoleums. Currently, a cemetery company that sells preconstruction mausoleums or belowground crypts must begin construction within 48 months of the date of the first sale, and construction must be completed within 5 years after that date. An extension up to one year may be granted by the Commission for completion of construction for good cause. The PCS would allow the Commission to grant extensions up to three years.

EFFECTIVE DATE: The act would become effective October 1, 2009.

S18-SMSU-39(CSSU-22) v1

FAX MESSAGE TO: Senator Steve Goss

COMPANY: Frank Rose Jr

FAX # 828-919-733-3599

FROM: 828-837-5661

NUMBER OF PAGES BEING SENT,
INCLUDING THIS COVER SHEET: 3

IF YOU EXPERIENCE ANY DIFFICULITY IN RECEIVING THIS FAX MESSAGE,
PLEASE CONTACT US AT 828-837-2109 IMMEDIATELY. PHONE
FAX # 828-837-5661
THANK YOU

MESSAGES:

Here is for your information.
Thanks for your help
Frank

April 23, 2009

Steve/John This is for your information. Thanks for your help! Frank

Governor: Bev Perdue
116 West Jones Street
Raleigh, NC 27699-0301

Subject: Transparent, and Accountable, Senate Bill-18

Dear Governor,

As a member of the N.C. Cemetery Commission, I totally agree with your comments on being transparent and accountable. We, at the commission need your help to pass Senate Bill-18 to protect the consumer. As a commission we did intensive studies on bonding and voted 100% to suggest eliminating all bonding (North Carolina is one of seven states that permit bonding). In North Carolina there is more than 82 million dollars in bonds which for the most part is to protect merchandise presold to the average wage earners, which includes opening and closing graves, vaults, memorials, mausoleums, crypts and underground crypts. Regarding, opening and closing, vaults and memorials there is nothing built in for inflation, and delivery may not be made for 50 to 75 years with no protection against inflation. During the past few years there have been corporations that bought existing cemeteries, they bought bonds and were permitted (I think in error) to take the merchandise trust funds, which amounts to millions of dollars, outside our state with no protection against inflation.

Example: As the law is now, a cemetery operation may sell lots, vaults, opening and closing the grave and a memorial marker, let's say for six thousand dollars, the lots will be $2000.00 of which will by law be deeded to the purchaser and perpetual care deposited when paid for. For the remaining $4000.00, a bond can

be purchased but may not be delivered until purchaser's death (how many years will that be)? These bonds permit the cemetery operator to spend the $4000.00 and leave the liability of delivery of merchandise to future operators.

I have been in the cemetery, funeral business and related business for forty-nine (49) years. I was here in 1975 when the bonding was put into law and the intent was (in my opinion) to permit bonding for mausoleum construction and "poured in place" underground crypts, with a maximum exposure of five years. We never expected our trust funds to be invaded or pass the delivery of services and merchandise liability to future generations. A bankruptcy can occur and the consumer is guaranteed nothing. We have a very fair 60% cemetery trust law, for funeral homes a 90% trust law is in force. I sincerely hope you, as well as other law makers will protect the consumer and future cemetery owners. If you need more information contact Senator Goss or Senator Snow.

Sincerely yours,

Frank Rose Jr.

CC: N.C. Cemetery Commission, Administrator, Jimmy Miller
All Senators

Results of mtg.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-CSSU-22 [v.3]

5/6/2009 12:04:25 AM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount. If the cemetery company posted a performance bond in lieu of any trust account required under G.S. 65-66(b) and G.S. 65-70(b) prior to October 1, 2009, then the Commission shall not approve any change of control until the applicant has provided sufficient evidence that the performance bond is being appropriately maintained and in an

amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or ~~that~~ cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to ~~G.S. 65-64(e)~~G.S. 65-64(e), which may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in accordance with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the

Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing

contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section, but may require that a casket be enclosed within a vault. A cemetery company may charge a reasonable fee not to exceed twenty dollars ($20.00) for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-66(g) is repealed.

SECTION 6. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year~~,three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and

~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

SECTION 7. G.S. 65-70(f) is repealed.

SECTION 8.(a). There is created the Legislative Study Commission on the North Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

SECTION 8.(b). The Commission shall consist of 10 members as follows:

(1) Five members appointed by the Speaker of the House of Representatives.

(2) Five members appointed by the President Pro Tempore of the Senate.

SECTION 8.(c). The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

SECTION 8.(d). The Commission shall study the following issues relating to the North Carolina Cemetery Act:

(1) The membership of the Cemetery Commission.

(2) The powers and duties of the Cemetery Commission, including the Commission's authority to investigate and address consumer complaints.

(3) Qualifications of trustees for cemetery funds.

(4) Security of trust accounts maintained by cemetery companies.

(5) Adequacy of trust accounts cemetery companies are required to keep for sale of preneed merchandise and services and preconstruction and whether there should be any options in lieu of maintaining trust accounts.

(6) Protection for consumers who die before final payment is collected on a preneed contract.

(7) Any other matters the Commission deems appropriate.

SECTION 8.(e). The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120 19 and G.S. 120 19.1 through G.S. 120 19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The Senate's and the House of Representatives' Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120 32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 8.(f). The Commission shall report the results of its study and its recommendations to the 2010 Regular Session of the 2009 General Assembly upon its convening, and the Commission shall terminate upon the filing of its report.

SECTION 9. Sections 1 through 7 of this act become effective October 1, 2009. Sections 5 and 7 of this act apply to receipts from sales of personal property or services and receipts from sale of preconstruction crypts that occur on or after that date. The remainder of the act is effective when it becomes law.

SENATE COMMERCE COMMITTEE
Tuesday, May 5, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m., Tuesday, May 5, 2009, in Room 1027 of the Legislative Building. Senator R.C. Soles presided. Twenty-three members of the committee were present. Marlie Baker of Cary, Tirzah Hansen, Candace McMurran, Trey Govan, and Ivan Howard of Manteo on served as pages.

S.B. 981 – Mortgage Guaranty Insurance Revisions.

Senator Jenkins was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS give the Commissioner of Insurance discretion to waive the minimum policyholders position requirement under certain circumstances for mortgage guaranty insurers. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 567 – Promote Electricity Demand Reduction.

Senator Hartsell was recognized to explain the bill which promotes the use of electricity demand reduction to satisfy renewable energy portfolio standards. Joe Forbes, Chief Operating Officer of Consert, was recognized to explain and demonstrate the bill's reduction proposal. Becky Harrison, Smart Growth Director with Progress Energy, was recognized to express concerns with the "standards" working in the bill. Scott Gardner, lobbyist for Duke Energy, stated that Duke has not decided which technology to use in the future. Glen Jernigan, Fayetteville Public Works, stated that they were impressed and has entered into a pilot program. Tom Bean, NC Sustainable Energy, had questions, but no opposition to the bill. Senator Nesbitt was recognized to offer an amendment which Senator Hartsell opposed. Senator Rand offered a second amendment with clarifying language and moved for its adoption. The motion carried. Senator Stein moved for a favorable report and the motion carried. A copy of the bill, the amendment and the summary is attached.

The meeting adjourned at 11:48 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 05, 2009

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

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

S.B. **567** Promote Electricity Demand Reduction.

Draft Number:	55358
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **981** Mortgage Guaranty Insurance Revisions.

Draft Number:	15259
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 5, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 567	Promote Electricity Demand Reduction.	Senator Hartsell
SB 660	Auto Insurance/Diminution in Value.	Senator Rucho
SB 686	Electronic Reporting of Abandoned Property.	Senator Foriest
SB 889	Utilities/Carrier of Last Resort.	Senator Vaughan
SB 981	Mortgage Guaranty Insurance Revisions.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Kimbrell	Parker Poe
Debra DeCamillis	UNC-IOG
Sammy Roberson	TWC
Thom Moore	Fidelity Wireless
Steve Brewer	EMBARQ
Bob Wells	Indep Telco Alliance

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Taggart	Genworth Mortgage Insurance
Cindie Lowe	RMIC Corp.
Crystal Martin	RMIC Corp.
Katherine Turco	FC
Lori Cherry	NC Div Air Quality
Allen Hartsfield	DST
A Sohari	DST
Mallory Hatcher	MWC
	NCAEC
Jennifer Cohen	IFNC
Pam Stahl	NCBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 5, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
DAVID BARNES	Poyner Spruill
PRESTON HOWARD	MCIC
Joyce Peters	JP Assoc
John Lyon	AT+T
Bill Craig	CenturyTel
[illegible]	AT&T
MARTY BOCOCK	EMBARQ
HERB CROMARTIE	AT&T

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Samuel W Hinton	NCUC Staff
Daniel Long	"
William Flowers	intern
[signature]	[signature]
JOHN GOODMAN	NC CHAMBER
David Stoller	STAFF PARM
Becky Harrison	Progress Energy
Kathy Hawkins	Progress Energy
Scott Gardner	DUKE ENERGY
Todd Lanham	AT&T

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Grant	OMEGA PROPERTY GROUP Ste 109 3221 Blue Ridge Rd Raleigh, NC 27612
David Miner	Consert, Inc
Doris Weaver	NC CWA
Roy Moore	Consert, Inc.
Jeff Esthera	Consort Inc.
Jaz Tunnell	Piedmont Nat. Gas
Tom Bean	NCSEA, NCEF
John Allen	NMRS
Lauren Whaley	NC Credit Union League
Rachelle Thompson	Commerce
Sharon Miller	CUCA

Senate Commerce Committee
Tuesday, May 5, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 567	Promote Electricity Demand Reduction.	Sen. Hartsell
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 686	Electronic Reporting of Abandoned Property.	Sen. Foriest
SB 889	Utilities/Carrier of Last Resort.	Sen. Vaughan
SB 981	Mortgage Guaranty Insurance Revisions.	Sen. Jenkins

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 981
PROPOSED COMMITTEE SUBSTITUTE S981-CSRG-19 [v.1]

5/4/2009 11:34:36 AM

Short Title: Mortgage Guaranty Insurance Revisions. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO GIVE THE COMMISSIONER OF INSURANCE DISCRETION TO WAIVE THE MINIMUM POLICYHOLDERS POSITION REQUIREMENT UNDER CERTAIN CIRCUMSTANCES FOR MORTGAGE GUARANTY INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-10-125 reads as rewritten:

"**§ 58-10-125. Policyholders position and capital and surplus requirements.**

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position of not less than one twenty-fifth of the insurer's aggregate insured risk outstanding. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) ~~If~~ Subject to the provisions of subsections (i) through (l) of this section, if a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.

(c) A mortgage guaranty insurer shall at all times maintain capital and surplus in the greater of the amount required by G.S. 58-7-75 or subsection (a) of this ~~section.~~section, unless a waiver is obtained by the mortgage guaranty insurer pursuant to subsection (i) of this section.

(d) through (h) Repealed by Session Laws 2007-127, s. 5, effective July 1, 2007.

(i) The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.

(j) In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs, all of the following factors, among others, may be considered:

(1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

(2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.

(3) The nature and extent of the mortgage guaranty insurer's reinsurance program.

(4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

(5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.

(6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.

(7) The adequacy of the mortgage guaranty insurer's reserves.

(8) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

(10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.

(11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.

(12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

(k) The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

(l) Any waiver shall be (i) for a specified period of time, not to exceed two years unless the Commissioner determines that a longer period is reasonable and justified under the circumstances, and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 981:
Mortgage Guaranty Insurance Revisions

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 4, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S981-CSRG-19		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 981 authorizes the Commissioner of Insurance to waive the minimum policyholders position financial requirements for mortgage guaranty insurers if the Commissioner finds that the insurer's policyholders position is reasonable in relationship to the insurer's risk and is adequate to meet the insurer's financial needs, as determined by certain factors listed in the bill.***

The Proposed Committee Substitute amends the title and makes a technical change.

[As introduced, this bill was identical to H1150, as introduced by Rep. Holliman, which is currently in House Financial Institutions, if favorable, Insurance.]

BACKGROUND: Mortgage guaranty insurance, also known as private mortgage insurance provides coverage for losses incurred by a mortgage lender resulting from a borrower's failure or inability to make mortgage payments. Typically, mortgage guaranty insurance is purchased by the borrower for the protection of the lender.

According to the Department of Insurance, more guaranty insurers are domiciled in NC than any other state in the country.

[As introduced, this bill was identical to H1150, as introduced by Rep. Holliman, which is currently in House Financial Institutions, if favorable, Insurance.]

CURRENT LAW: G.S. 58-10-125 requires guaranty insurers to maintain at all times a minimum policyholders position of not less than 1/25th of the insurers outstanding risk. The policyholders position is the sum of the contingency reserve of the insurer and the policyholders' equity (the insurer's net worth). If the insurer fails to maintain the minimum policyholders position, it must cease transacting new business until it reaches the required minimum position.

BILL ANALYSIS: Senate Bill 981 authorizes the Commissioner to waive the minimum policyholders position financial requirements if the Commissioner finds that the insurer's policyholders position is reasonable in relationship to the insurer's risk and is adequate to meet the insurer's financial needs. In determining whether an insurer's policyholders position is reasonable and adequate, the Commissioner may consider, at a minimum, the following:

- The size of the mortgage guaranty insurer as measured by assets, capital, surplus reserves, premiums, and other criteria.
- The extent to which its business is diversified across time, geography, credit quality, etc..
- The nature and extent of its reinsurance.
- The quality diversification and liquidity of its assets and investments.
- The historical and forecasted trend in its policyholders position.
- The policyholders position of comparable companies.

- The adequacy of its reserves.
- The quality and liquidity of investment in affiliates.
- The quality of its earnings.
- An independent actuary's opinion of its policyholders position.
- Actual and potential capital contributions.
- Historical and forecasted trends in its aggregate risk.

Under the bill, a guaranty insurer must request a waiver of the statutory minimum policyholders position in writing at least 90 days in advance of the date the insurer expects to exceed the required minimum policyholders position.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 981 becomes effective July 1, 2009.

S981-SMRG-31(CSRG-19) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 567

Short Title:	Promote Electricity Demand Reduction.	(Public)
Sponsors:	Senators Hartsell; and Rand.	
Referred to:	Commerce.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE USE OF ELECTRICITY DEMAND REDUCTION TO SATISFY RENEWABLE ENERGY PORTFOLIO STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(a) is amended by adding a new subdivision to read:

"(3a) "Electricity demand reduction" means a reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric public utility and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of nonproprietary standards that have been initiated, established, or approved by the Institute of Electrical and Electronics Engineers or the International Telecommunications Union."

SECTION 2. G.S. 62-133.8(b) reads as rewritten:

"(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements

of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

g. Electricity demand reduction."

SECTION 3. G.S. 62-133.8(c) reads as rewritten:

"(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities. –

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.

d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.

e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

g. Electricity demand reduction."

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

SENATE BILL 567:
Promote Electricity Demand Reduction

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 4, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Steven Rose
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***SB 567 amends subsections of G.S. 62-133.8 as enacted by S.L. 2007-397 (SB 3). SB 567 adds a new definition, "electricity demand reduction," and permits "electricity demand reduction" to be used to satisfy the "renewable energy and energy efficiency standards" (REPS) imposed by S.L. 2007-397.***

[As introduced, this bill was identical to H1484, as introduced by Reps. Barnhart, Dickson, Glazier, which is currently in House Public Utilities, if favorable, Energy and Energy Efficiency.]

CURRENT LAW: S.L. 2007-397 (SB 3) is a comprehensive piece of energy related legislation enacted in 2007. Among its many provisions it enacted G.S. 62-133.8, which sets out the specific REPS requirements to be achieved by public utilities, electric cooperatives, and electricity-supplying municipalities and specifies the way these requirements may be met. It also provides definitions for demand-side management and energy efficiency measure which are as follows:

""Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods."Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load."

""Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function."Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management."

Public utilities may not use demand-side management in meeting REPS requirements, but electric cooperatives and electricity-supplying municipalities are permitted to use it as part of the REPS mix.

BILL ANALYSIS: SB 567 adds a new definition to G.S. 133.8 as follows:

""Electricity demand reduction" means a reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric public utility and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of nonproprietary standards that have been initiated, established, or approved by the Institute of Electrical and Electronics Engineers or the International Telecommunications Union."

It adds "electricity demand reduction" as a way that public utilities, electric cooperatives, and electricity-supplying municipalities may meet their REPS requirements.

The text of G.S. 62-133.8, which includes applicable definitions and REPS requirements for public utilities, electric cooperatives, and electricity-supplying municipalities is as follows (pertinent subsections only):

"§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

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

(1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

(2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.

(3) "Electric power supplier" means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.

(4) "Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management.

(5) "New renewable energy facility" means a renewable energy facility that either:
   a. Was placed into service on or after January 1, 2007.
   b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to January 1, 2007.
   c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.

(6) "Renewable energy certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A "renewable energy certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.

(7) "Renewable energy facility" means a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:
   a. Generates electric power by the use of a renewable energy resource.
   b. Generates useful, measurable combined heat and power derived from a renewable energy resource.
   c. Is a solar thermal energy facility.

(8) "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy

resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities. –

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.

d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.

e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(d) Compliance With REPS Requirement Through Use of Solar Energy Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric

facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Solar Energy Resources
2010	0.02%
2012	0.07%
2015	0.14%
2018	0.20%

(e) Compliance With REPS Requirement Through Use of Swine Waste Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Swine Waste Resources
2012	0.07%
2015	0.14%
2018	0.20%

(f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT

pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement.

(h) Cost Recovery and Customer Charges. –

(1) For the purposes of this subsection, the term "incremental costs" means all reasonable and prudent costs incurred by an electric power supplier to:

a. Comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to G.S. 62-133.9.

b. Fund research that encourages the development of renewable energy, energy efficiency, or improved air quality, provided those costs do not exceed one million dollars ($1,000,000) per year.

c. Comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section that exceed the costs that the electric power supplier would have incurred under those subsections in the absence of the federal mandate.

(2) All reasonable and prudent costs incurred by an electric power supplier to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section, including, but not limited to, the avoided costs associated with a federal mandate that exceeds the avoided costs that the electric power supplier would have incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section in the absence of the federal mandate, shall be recovered by the electric power supplier in an annual rider charge assessed in accordance with the schedule set out in subdivision (4) of this subsection increased by the Commission on a pro rata basis to allow for full and complete recovery of all reasonable and prudent costs incurred to comply with the federal mandate.

(3) Except as provided in subdivision (2) of this subsection, the total annual incremental cost to be incurred by an electric power supplier and recovered from the electric power supplier's retail customers shall not exceed an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. The total annual incremental cost recoverable by an electric power

supplier from an individual customer shall not exceed the per-account charges set out in subdivision (4) of this subsection except as these charges may be adjusted in subdivision (2) of this subsection.

(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed the following per-account annual charges:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential per account	$10.00	$12.00	$34.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00

(5) The Commission shall adopt rules to establish a procedure for the annual assessment of the per-account charges set out in this subsection to an electric public utility's customers to allow for timely recovery of all reasonable and prudent costs of compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section and to fund research as provided in subdivision (1) of this subsection. The Commission shall ensure that the costs to be recovered from individual customers on a per-account basis pursuant to subdivisions (2) and (3) of this subsection are in the same proportion as the per-account annual charges for each customer class set out in subdivision (4) of this subsection.

...."

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: If the term "electricity demand reduction" is, in fact, a form of "demand-side management," SB 567 adds a means of satisfying the REPS requirement for public utilities that was not permissible under the original legislation.

S567-SMRL-51(e1) v1

SENATE COMMERCE COMMITTEE
Thursday, May 7, 2009 at 8:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 8:00 a.m., Thursday, May 7, 2009, in Room 1027 of the Legislative Building. Senator R.C. Soles presided. Twenty-two members of the committee were present. Sarah Hinnant of Wendell, Carolina Lowcker of Nags Head, and Grired Jordon of Kernersville served as pages.

S.B. 1004 – Level Playing Field/Cities/Service Providers.

Senator Hoyle was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS authorizes the Revenue Laws Study Committee to study local government owned and operated communication services. Susan Klutzz, Mayor of Salisbury, and Grant Goings, Wilson City Manager, were recognized to express concerns about the bill. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 634 – Truth in Music Advertising Act.

Senator Weinstein was recognized to explain the bill which prohibits the advertising and conducting of certain live musical performances or productions, provides for enforcement and imposes a penalty. Senator Stein moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 749 – Revise UM/UIM Liability Coverage Requirements.

Senator Clodfelter was recognized to explain the bill. Senator McKissick moved to adopt the PCS for discussion and the motion carried. The PCS revises and clarifies the requirements for uninsured and underinsured motorist coverage in motor vehicle liability insurance policies. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 831 – Extend Permits Regarding Land Development.

Senator Purcell moved to adopt the PCS for discussion and the motion carried. Senator Clodfelter explained that the PCS extends 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. Senator Hunt moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 295 – Clarify Closest Market.

Senator Jenkins was recognized to explain the bill and moved for the adoption of the PCS. The motion carried. The PCS requires the closest market to which a crop may be hauled to be within

one hundred fifty miles of the farm from which the crop is hauled. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 828 – Bidding Process Changes/Maintenance and Op..

Senator Jenkins moved to adopt the PCS for discussion and the motion carried. The PCS increases the maximum amount at which projects may undergo an informal bidding process and clarifies the application of this process, continues the Department's program for participation of disadvantaged minority-owned and women-owned businesses, and amends various statutes in Chapter 136 to conform with the Department's focus on all modes of transportation infrastructure. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 357 – Utilities/Regulation of Pole Attachments.

Senator Rand was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS requires municipalities and membership corporations organized under Chapter 117 of the General Statutes to permit communications service providers to use their poles, ducts, and conduits for attachments and related uses, and authorizes the North Carolina Business Court to consider and resolve disputes concerning the rates, terms, and conditions associated with the use. Senator Stevens moved for a favorable report and the motion carried. A copy of the PCS is attached.

S.B. 686 – Electronic Reporting of Abandoned Property.

Senator Foriest was recognized to explain the bill which provides for the electronic filing of abandoned property reports. Senator Foriest moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 425 – Fair Housing Act Amendment.

Senator Kinnaird was recognized to explain the bill which amends the State Fair Housing Act to prohibit discrimination on the basis of receipt of housing assistance and appropriates funds to the North Carolina Human Relations Commission to administer this act. Senator Garrou offered an amendment to remove the appropriations portion of the bill. She moved for the adoption of the amendment and the motion carried. Bill Rowe, NC Justice Center, and Anna Liese Dolph, Disability Rights NC's senior attorney, were recognized to speak in favor of the bill. Randal Bryant and Gary Triplett with Drucker & Falk were recognized and they opposed the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill, the summary, the amendment and an opposition handout is attached.

S.B. 465 – Amend State Fair Housing Act.

Senator McKissick was recognized to explain the bill which amends the State Fair Housing Act. He moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 810 – Affordable Housing/No Discrimination.

Senator McKissick moved to adopt the PCS for discussion and the motion carried. The PCS provides that it is a violation of the State's Fair Housing Act to discriminate in land-use decisions

or the permitting of developments based on the fact that a development contains affordable housing units. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 648 – Allow DOT to Provide Direct Funding.

Senator Goss was recognized to explain the bill. The bill allows the Department of Transportation to partner with private developers on transportation improvement projects and provide funding directly to the private developer. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 931 – Commercial Drivers License Changes.

Senator Goss explained the bill which provides reciprocity to commercial drivers license holders from Mexico, expands the definition of conviction for out-of-state violations, expands the definition of employer with regards to commercial drivers licenses, adds a disqualifying violation to commercial drivers licenses, increases civil penalties, expands employer reporting responsibilities, and modifies requirements for convictions ten years old or older. Johanna Reese, the legislative liaison with the Department of Transportation, and Robbie Quinn, CDL and Federal Programs Compliance manager, Department of Motor Vehicles, were recognized to answer questions. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 9:00 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 07, 2009

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

FAVORABLE

S.B.	**465**	Amend State Fair Housing Act.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**634**	Truth in Music Advertising Act.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**648**	Allow DOT to Provide Direct Funding.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**686**	Electronic Reporting of Abandoned Property.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**931**	Commercial Drivers License Changes.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 07, 2009

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

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

S.B. **357** Utilities/Regulation of Pole Attachments.

Draft Number:	15261
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **810** Affordable Housing/No Discrimination.

Draft Number:	35312
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1004** Level Playing Field/Cities/Service Providers.

Draft Number:	55370
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 07, 2009

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

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

S.B. **295** Clarify Closest Market.

Draft Number:	15264
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **749** Revise UM/UIM Liability Coverage Requirements.

Draft Number:	35311
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, May 11, 2009

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

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

S.B. **831** Extend Permits Regarding Land Development.

Draft Number:	55383
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, May 11, 2009

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

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

S.B. **425** Fair Housing Act Amendment.

Draft Number:	55369
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **828** Bidding Process Changes/Maintenance and Op.

Draft Number:	55376
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 7, 2009	8:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 295	Clarify Closest Market.	Senator Jenkins
SB 357	Utilities/Regulation of Pole Attachments.	Senator Rand
SB 425	Fair Housing Act Amendment.	Senator Kinnaird
SB 465	Amend State Fair Housing Act.	Senator McKissick
SB 634	Truth in Music Advertising Act.	Senator Weinstein
SB 648	Allow DOT to Provide Direct Funding.	Senator Goss
SB 660	Auto Insurance/Diminution in Value.	Senator Rucho
SB 686	Electronic Reporting of Abandoned Property.	Senator Foriest
SB 749	Revise UM/UIM Liability Coverage Requirements.	Senator Clodfelter
SB 810	Affordable Housing/No Discrimination.	Senator McKissick
SB 828	Bidding Process Changes/Maintenance and Op.	Senator Jenkins
SB 831	Extend Permits Regarding Land Development.	Senator Clodfelter
SB 889	Utilities/Carrier of Last Resort.	Senator Vaughan
SB 911	North Carolina Building Code/Council Changes.	Senator Clodfelter
SB 916	Tenant Security Deposit/Interest-Bear. Acct.	Senator Dorsett
SB 931	Commercial Drivers License Changes.	Senator Goss
SB 1001	Transportation Corridor Mapping Changes.	Senator Jenkins
SB 1004	Level Playing Field/Cities/Service Providers.	Senator Hoyle

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Thursday, May 7, 2009, 8:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 295	Clarify Closest Market.	Sen. Jenkins
SB 357	Utilities/Regulation of Pole Attachments.	Sen. Rand
SB 425	Fair Housing Act Amendment.	Sen. Kinnaird
SB 465	Amend State Fair Housing Act.	Sen. McKissick
SB 634	Truth in Music Advertising Act.	Sen. Weinstein
SB 648	Allow DOT to Provide Direct Funding.	Sen. Goss
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 686	Electronic Reporting of Abandoned Property.	Sen. Foriest
SB 749	Revise UM/UIM Liability Coverage Requirements.	Sen. Clodfelter
SB 810	Affordable Housing/No Discrimination.	Sen. McKissick
SB 828	Bidding Process Changes/Maintenance and Op.	Sen. Jenkins
SB 831	Extend Permits Regarding Land Development.	Sen. Clodfelter
SB 889	Utilities/Carrier of Last Resort.	Sen. Vaughan
SB 893	Workers' Comp Self-Insurance Security Ass'n.	Sen. Hartsell
SB 911	North Carolina Building Code/Council Changes.	Sen. Clodfelter
SB 931	Commercial Drivers License Changes.	Sen. Goss
SB 1004	Level Playing Field/Cities/Service Providers.	Sen. Hoyle

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	AT&T
Stan Face	Verizon
Dan Sipos	SA
Charlotte Peters	citizen
Justis Peters	citizen
GARY TRIPLETT	Drucker and Falk, LLC
RANDAL BRYANT	DRUCKER AND FALK LLC
Steven Waters	Living Streets
John Murowski	NFO
Jim Stewart	NC Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC HBA
Anthony Roper	NCDOT
ROBERTO CANALES	NCDOT
Tom Caley	NC CWA
Bob Wells	N.C. Telco Alliance
Cathy Stamey	NCSISA
Tony Riddick	NCDOI
Alex Romalotis	Payne Sprouse
LEE SETTLE	SQUARE 1 BANK
David Stoller	State Farm

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 7, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	NW
Jennifer Cohen	IFNC
A. Solari	DST
Allen Martin	DST
Jay Rouse	NCAEC
Marty Bacock	Embarq
Mallory Hatcher	MWC
[illegible]	EC
Paul Sherman	NCFB
Marc Nichols	CCPS / NCSHP
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NCDOI
Ron Ennis	NCDOT
Marau Tatum	Brady Pierce
Stanley Roberson	TWC
Bill Phillips	TWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	JD, AL, PA
	[illegible]
Robin Smith	DENR
Elizabeth Biser	DENR
Mary Beth McMillan	NC AFL-CIO
Ellen McCullen	Nelson Mullins
DAVID BARNES	Poyner Spruill
Christy Agner	Dept. of Admin
Richard Bonilden	NC Human Relations Commission
Annaliese Dolph	DRNC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 7, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Julia Leggett	The Arc of NC
Henry Jones	Attorney Raleigh
Amy McConkey	Smith Anderson
David Bray	MWC
John Monaghan	Piedmont Natural Gas Company
Cam Gwyn	BBMH
Kathy Hawkins	Progress Energy
Johanna Reese	DOT
Jon Nance	NCDOT
Cady Thomas	NC Assn of Realtors
David McHowan	NC Realtors

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1004*
PROPOSED COMMITTEE SUBSTITUTE S1004-CSRL-33 [v.1]

5/6/2009 7:43:13 PM

Short Title: Level Playing Field/Cities/Service Providers. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE REVENUE LAWS STUDY COMMITTEE TO STUDY LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. The Revenue Laws Study Committee shall study local government owned and operated communication services. The Committee may propose legislation, if appropriate, to regulate the operation of local government owned and operated communication services. In making this study, the Committee shall consider:

(1) The private and public costs and the benefits of providing communication services through a private communication services provider compared to a local government owned communication services provider, including the effect on competition, infrastructure deployment and investment by private providers, the implementation of new technologies, existing and future jobs, actual economic development prospects, tax-based growth, education, and public health.

(2) The regulatory structures applicable to the provision of communication services by local government owned communication services providers as compared to the regulatory structures applicable to the provision of communication services by private providers.

(3) The effect of competition from local government owned and operated communication services on privately owned communication services.

(4) The impact on state and local tax revenues from competition by local government owned communication services providers with private providers.

(5) The extent of communication services currently offered by local governments and the manner in which the capital and operational costs of such services are funded.

SECTION 2. The Committee shall report its findings and recommendations, including any proposed legislation, to the 2010 Regular Session of the 2009 General Assembly.

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

SENATE BILL 1004:
Level Playing Field/Cities/Service Providers

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Steven Rose
Analysis of:	PCS to First Edition S1004-CSRL-33		Committee Counsel

SUMMARY: The proposed committee substitute to SB 1004 would authorize the Revenue Laws Study Committee to study local government owned and operated communications services.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 1004 would authorize the Revenue Laws Study Committee to study local government owned and operated communications services. In making this study, the Committee shall consider:

1. The private and public costs and the benefits of providing communication services through a private communication services provider compared to a local government owned communication services provider, including the effect on competition, infrastructure deployment and investment by private providers, the implementation of new technologies, existing and future jobs, actual economic development prospects, tax-based growth, education, and public health.
2. The regulatory structures applicable to the provision of communication services by local government owned communication services providers as compared to the regulatory structures applicable to the provision of communication services by private providers.
3. The effect of competition from local government owned and operated communication services on privately owned communication services.
4. The impact on state and local tax revenues from competition by local government owned communication services providers with private providers.
5. The extent of communication services currently offered by local governments and the manner in which the capital and operational costs of such services are funded.

The Committee shall report its findings, including any proposed legislation to the 2010 Regular Session of the 2009 General Assembly.

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

Heather Fennell, Counsel to House Public Utilities, contributed to this summary.

S1004-SMRL-55(CSRL-33) v1

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.

SENATE BILL 634:
Truth in Music Advertising Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. Weinstein	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 634 would prohibit the advertising and conducting of certain live musical performances or productions.

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: Creates a new Article 6 in Chapter 75 of the General Statues entitled "Truth in Music Advertising."

Defines the terms "performing group," "recording group," and "sound recording."

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, and the performance is not no closely related as to confuse or mislead the public.
4. The advertising does not relate to a live music 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 injunction an advertisement or production that violates this Act. In such an action the court may 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 and no more than $15,000 per violation. Each performance is a separate violation.

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

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.

S634-SMTD-52(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 749
PROPOSED COMMITTEE SUBSTITUTE S749-CSRG-9 [v.6]

5/1/2009 9:17:13 AM

Short Title: Revise UM/UIM Liability Coverage Requirements. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 reads as rewritten:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

(a) A "motor vehicle liability policy" as ~~said term is~~ used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named ~~therein~~ in the policy as insured.

(b) Such owner's policy of liability ~~insurance:~~insurance shall meet the following requirements:

(1) ~~Shall~~ It shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be ~~granted;~~granted.

(2) ~~Shall~~ It shall insure the ~~person named therein~~persons named in the policy and any other person, as insured, using any ~~such~~ covered motor vehicle or motor vehicles with the express or implied permission of ~~such~~ a named ~~insured,~~insured or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one ~~accident; and~~accident.

(3) In addition to the coverages set forth in subdivisions (2) and (4) of this subsection, no policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall

be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. ~~therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (1) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (2) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. The insurer shall notify the named insured of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. The provisions shall include coverage for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured. ~~insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and~~ The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (1) the limits shall not exceed one million dollars ($1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (2) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured

at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between

motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer ~~thereof~~ of the vehicle is unable to make payment with respect to the legal liability within the limits specified ~~therein~~ by the policy because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing ~~herein~~ in this section shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided ~~herein~~in this section.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent ~~thereof~~of the payment made, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage ~~thereunder~~under the insurance policy, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the

motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding any language or provision to the contrary, no motor vehicle other than a motor vehicle covered under a personal auto policy, the form for which is promulgated by the North Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and approved by the Commissioner, shall be required by this subdivision to be covered by uninsured motorist coverage or in any way be subject to the requirements of this subdivision. For the purposes of this subdivision, a personal auto policy shall not include any endorsement to any policy other than a personal auto policy, even if the form for such endorsement is promulgated by the North Carolina Rate Bureau and approved by the Commissioner.~~the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher uninsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.~~

(4) ~~Shall~~It shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist bodily injury coverage, to be used only with a policy that is written at bodily injury liability limits that

exceed those prescribed by subdivision (2) of this subsection. ~~section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (1) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (2) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident and (3) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. The insurer shall notify the named insured of his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or ~~trailer other than~~trailer, but shall not include:

~~(i)~~a. A farm-type tractor or other vehicle designed for use principally off public roads and while not upon public ~~roads,~~roads;

~~(ii)~~b. A vehicle operated on rails or ~~crawler-treads,~~crawler-treads; or

~~(iii)~~c. A vehicle while located for use as a residence or premises.

The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all

liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any

claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding any language or provision to the contrary, no motor vehicle other than a motor vehicle covered under a personal auto policy, the form for which is promulgated by the North Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and approved by the Commissioner, shall be required by this subdivision to be covered by underinsured motorist coverage or in any way be subject to the requirements of this subdivision. For the purposes of this subdivision, a personal auto policy shall not include any endorsement to any policy other than a personal auto policy, even if the form for such endorsement is promulgated by the North Carolina Rate Bureau and approved by the Commissioner.~~the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.~~

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged ~~therefor~~for the policy, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided ~~thereunder~~ under the policy in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Uninsured or underinsured motorist coverage that is provided as part of a ~~motor vehicle liability policy~~personal auto policy, the form for which is promulgated by the North Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and approved by the Commissioner, shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured. For the purposes of this subsection, a personal auto policy shall not include any endorsement to any policy other than a personal auto policy, even if the form for such endorsement is promulgated by the North Carolina Rate Bureau and approved by the Commissioner.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment

taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application ~~therefor~~for the policy, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance ~~thereunder~~ coverage provided by the policy with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to ~~the~~a named insured, when the policy is issued and renewed, that ~~the~~a named insured may purchase uninsured

motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 10 point type:

"NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ACCIDENT. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

Payment of premium for the cost of uninsured or underinsured motorist coverage by or on behalf of a named insured shall create an irrebuttable presumption that the reasonable notice required by this subsection has been given to the named insured. In addition, evidence of the coverage limits stated in the policy for uninsured or underinsured motorist coverage shall constitute irrebuttable proof of the amount of uninsured and underinsured motorist coverage provided by the policy.

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

SECTION 2. This act becomes effective October 1, 2009, and applies to motor vehicle liability insurance policies issued or renewed after that date.

SENATE BILL 749: Revise UM/UIM Liability Coverage Requirements

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S749-CSRG-9		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 749 makes changes to uninsured and underinsured motorist coverages to provide that uninsured motorist (UM) coverage may be purchased at limits less than bodily injury liability coverage for any one vehicle insured under the policy, but may not be less than the minimum liability limits for bodily injury and property damage required under law. Underinsured motorist (UIM) coverage may also be purchased at limits less than liability coverage, but the coverage must exceed the minimum bodily injury liability limits required by law and must equal the limits of uninsured motorist bodily injury coverage purchased by the insured.***

CURRENT LAW: In 2008, S.L. 2008-124 (House Bill 738) was enacted to require motor vehicle liability policies to include uninsured motorist coverage equal to the highest limits of bodily injury liability coverage and property damage liability coverage, and underinsured coverage equal to the highest limits of bodily injury liability coverage, for any for any one vehicle insured under the policy. This provision did not allow insureds the option of purchasing UM/UIM coverage at less than the highest limits under the insured's policy. Prior to this change, UM/UIM coverage could be rejected by an insured in writing.

BILL ANALYSIS: Section 1 of Senate Bill 749 makes the following changes:

- Amends G.S. 20-279.21(b)(3) to retain compulsory UM coverage. However, this coverage may be purchased at amounts lesser or greater amounts than an insured's liability coverage, but the coverage may not be less than the liability limits required under State law. ($30,000 per person/$60,000 per accident/$25,000 property damage)
- Amends G.S. 20-279.21(b)(4) to retain compulsory UM/UIM combined coverage. However, as with UM coverage, UIM coverage may be purchased at lesser or greater amounts, but the coverage must **exceed** the bodily injury liability limits required under State law and must be equal to the limits of uninsured bodily injury liability coverage purchased by the insured. (Only UM coverage is available to an insured who purchases the minimum limits of bodily injury coverage. UIM coverage is not available.)
- Amends G.S. 20-279.21(b)(3) and (4) to clarify that commercial vehicles are not subject to the compulsory UM or UM/UIM combined coverage, even if the commercial vehicle is a private passenger vehicle. This was the intended result in 2008.
- Provides that an insured's payment of a premium for the cost of UM and UIM coverage creates an irrebuttable presumption that the statutory requirements of reasonable notice of the insured's right to purchase UM/UIM coverage with limits up to $1,000,000 has been given. Also, evidence that the coverage limits were stated in the policy constitutes irrebuttable proof of the amount of coverage provided by the policy.

EFFECTIVE DATE: Senate Bill 749 becomes effective October 1, 2009 and applies to policies issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 831
PROPOSED COMMITTEE SUBSTITUTE S831-CSTD-32 [v.1]

5/6/2009 7:17:09 PM

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 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 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.

SENATE BILL 831:
Extend Permits Regarding Land Development

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Heather Fennell
Analysis of:	PCS to First Edition S831-CSTD-32		Committee Counsel

SUMMARY: ***The proposed committee substitute to Senate Bill 831 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 H1490, as introduced by Reps. Harrell, Goforth, Dollar, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship.]

BILL ANALYSIS: Senate Bill 831 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 proposed committee substitute to Senate Bill 1490 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:

- Water and wastewater permits issued by the Department of Environment and Natural Resources (DENR).

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.

S831-SMTD-51(CSTD-32) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 295
PROPOSED COMMITTEE SUBSTITUTE S295-CSRG-3 [v.1]

3/6/2009 10:33:01 AM

Short Title: Clarify Closest Market. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE CLOSEST MARKET TO WHICH A CROP MAY BE HAULED TO BE WITHIN ONE HUNDRED FIFTY MILES OF THE FARM FROM WHICH THE CROP IS HAULED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(12) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

a. Is hauling agricultural crops from the farm where the crop is grown to ~~the closest market.~~any market or point of further distribution, processing, storage, or other disposition within 150 miles of that farm.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

c. Does not exceed a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds."

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

SENATE BILL 295:
Clarify Closest Market

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 7, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S295-CSRG-3		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 295 would limit the exemption from weight restrictions that applies to vehicles transporting agricultural crops from farm to market by making it applicable only from the farm where the crop is grown to any market or point of further distribution that is within 150 miles of the farm.

CURRENT LAW: Under general law applicable to motor vehicles, the maximum single-axle weight of a vehicle operating without a special permit is 20,000 lbs., the maximum tandem-axle weight is 38,000 lbs., and the maximum gross weight is dependant on the number of axles and the distance between them but could not be greater than 80,000 lbs.

G.S. 20-118(c)(12) provides an exception to the weight restrictions for vehicles hauling agricultural crops from farm to the closest market. The single-axle weight limit is up to 22,000 lbs., the tandem-axle weight limit is up to 42,000 lbs., and the gross weight limit is up to 90,000 lbs. However, the vehicle is not authorized to operate on interstates or exceed posted bridge weight limits.

BILL ANALYSIS: The PCS for Senate Bill 295 would make the weight exemption for vehicles hauling agricultural crops from farm to market only applicable from the farm to any market or point of further distribution, processing, storage, or other disposition within 150 miles of the originating farm.

EFFECTIVE DATE: The act would be effective December 1, 2009, and would apply to offenses committed on or after that date.

S295-SMSU-64(CSRG-3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 828
PROPOSED COMMITTEE SUBSTITUTE S828-CSSU-41 [v.3]

5/6/2009 10:39:18 PM

Short Title: Bidding Process Changes/Maintenance and Op. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM AMOUNT AT WHICH PROJECTS MAY UNDERGO AN INFORMAL BIDDING PROCESS AND CLARIFY THE APPLICATION OF THIS PROCESS, TO CONTINUE THE DEPARTMENT'S PROGRAM FOR PARTICIPATION OF DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES, AND TO AMEND VARIOUS STATUTES IN CHAPTER 136 TO CONFORM WITH THE DEPARTMENT'S FOCUS ON ALL MODES OF TRANSPORTATION INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1 reads as rewritten:

"**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

(a) All contracts over one million two hundred thousand dollars ($1,200,000) that the Department of Transportation may let for ~~construction~~ construction, maintenance, or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) In those cases in which the amount of work to be let to contract for highway ~~construction, maintenance,~~construction or repair is one million two hundred thousand dollars ($1,200,000) or less, and for highway maintenance that is one million two hundred thousand dollars ($1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of

Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Chapter 143C of the General Statutes, the State Budget Act.

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with ~~highway construction, maintenance, or repair.~~the planning, design, maintenance, repair, and construction of transportation infrastructure. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) The Department of Transportation may enter into as many as two pilot contracts for public private participation in providing litter removal from State right-of-way. Selection of firms to perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to implement this section.

(m) The Department of Transportation may enter into as many as two pilot contracts for public-private participation in providing real-time traveler information at State-owned rest areas. Selection of firms to perform this work shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer a pilot program initiated under this subsection."

SECTION 2. G.S. 136-28.10(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund construction and repair projects of five hundred thousand dollars ($500,000) or less, and maintenance projects of five hundred thousand dollars ($500,000) or less per year, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation."

SECTION 3. The title of Chapter 136 of the General Statutes reads as rewritten:

"**Chapter 136.**

~~Roads and Highways.~~Transportation."

SECTION 4. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-4A. Transportation system.**

For the purpose of this Chapter, transportation system is defined as all modes of transportation infrastructure owned and maintained by the North Carolina Department of Transportation, including roads, highways, rail, ferry, aviation, public transportation, and bicycle and pedestrian facilities."

SECTION 5. G.S. 136-18(2) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land

or other property whatsoever that may be necessary for a State ~~highway~~ transportation system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation."

SECTION 6. G.S. 136-19 reads as rewritten:

"**§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.**

(a) The Department of Transportation is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights-of-way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for transportation infrastructure construction, including road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter set out. If the Department of Transportation acquires by purchase, donation, or condemnation part of a tract of land in fee simple for highway right-of-way as authorized by this section and the Department of Transportation later determines that the property acquired for transportation infrastructure, including highway right-of-way, or a part of that property, is no longer needed for ~~highway~~ infrastructure right-of-way, then the Department shall give first consideration to any offer to purchase the property made by the former owner. The Department may refuse any offer that is less than the current market value of the property, as determined by the Department. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to receive first consideration by the Department of their offer to purchase the property.

(b) Notwithstanding the provisions of subsection (a), if the Department acquires the property by condemnation and determines that the property or a part of that property is no longer needed for highway ~~right-of-way,~~right-of-way or other transportation project, the Department of Transportation may reconvey the property to the former owner upon payment by the former owner of the full price paid to the owner when the property was taken, the cost of any improvements, together with interest at the legal rate to the date when the decision was made to offer the return of the property. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to purchase the property pursuant to this subsection.

(c) The requirements of this section for reconveying property to the former owner, regardless of whether such property was acquired by purchase, donation, or condemnation, shall not apply to property acquired outside the right-of-way as an "uneconomic remnant" or "residue".

(d) The Department of Transportation is also vested with the power to acquire such additional land alongside of the rights-of-way ~~or~~ for transportation projects, including roads as in its opinion may be necessary and proper for the protection of the transportation projects, including roads and roadways, and such additional area as may be necessary as by it

determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Department of Transportation may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

(e) Notwithstanding any other provisions of law or eminent domain powers of utility companies, utility membership corporations, municipalities, counties, entities created by political subdivisions, or any combination thereof, and in order to prevent undue delay of highway projects because of utility conflicts, the Department of Transportation may condemn or acquire property in fee or appropriate easements necessary to provide ~~highway~~ transportation project rights-of-way for the relocation of utilities when required in the construction, reconstruction, or rehabilitation of a State ~~highway~~ transportation project. The Department of Transportation shall also have the authority, subject to the provisions of G.S. 136-19.5(a) and (b), to, in its discretion, acquire rights-of-way necessary for the present or future placement of utilities as described in G.S. 136-18(2).

(f) Whenever the Department of Transportation and the owner or owners of the lands, materials, and timber required by the Department of Transportation to carry on the work as herein provided for, are unable to agree as to the price thereof, the Department of Transportation is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used by it exclusively.

(g) The Department of Transportation shall have the same authority, under the same provisions of law provided for construction of State ~~highways,~~transportation projects, for acquirement of all rights-of-way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125 acres per mile of said parkways, including roadway and recreational, and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated may, at the option of the Department of Transportation, be a fee-simple title. The said Department of Transportation is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the Department of Transportation, payable out of the State Highway Fund. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

(h) The action of the Department of Transportation heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Department of Transportation in furtherance of the public interest.

(i) When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the Department of Transportation that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the Department of Transportation for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and

the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights-of-way on other property by the Department of Transportation."

SECTION 7. G.S. 136-19.3 reads as rewritten:

"**§ 136-19.3. Acquisition of buildings.**

Where the right-of-way of a proposed highway or other transportation project necessitates the taking of a portion of a building or structure, the Department of Transportation may acquire, by condemnation or purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing said building or structure, upon a determination by the Department of Transportation based upon an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the ~~highway~~ transportation project will be promoted thereby; provided, nothing herein contained shall be deemed to give the Department of Transportation authority to condemn the underlying fee of the portion of any building or structure which lies outside the right-of-way of any existing or proposed transportation project, including a public road, street or highway."

SECTION 8. G.S. 136-19.5 reads as rewritten:

"**§ 136-19.5. Utility right-of-way agreements.**

(a) Before the Department of Transportation acquires or proposes to acquire additional rights-of-way for the purpose of accommodating the installation of utilities as authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate utilities regarding the acquisition and use of the particular right-of-way and requiring the payment to the Department of Transportation for or recapture of all of its costs associated with that acquisition, including the use of funds allocated to such acquisition. Such agreements may take into account the fact that more than one utility can make use of the right-of-way. No such agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain under the control of the Department of Transportation.

(b) A prior agreement between the Department of Transportation and the affected utilities may be entered into but is not required when the acquisition of right-of-way is for the purpose of relocation of utilities due to construction, reconstruction, or rehabilitation of a State ~~highway~~ transportation project. The Department of Transportation shall notify the affected utility whose facilities are being relocated and the affected utility may choose not to participate in the proposed plan for right-of-way acquisition. The decision not to participate in the proposed plan of right-of-way acquisition shall not affect any other rights the utility may have as a result of the relocation of its lines or pipelines.

(c) Whenever the Department of Transportation requires the relocation of utilities located in a right-of-way for which the utility owner contributed to the cost of acquisition, the Department of Transportation shall reimburse the utility owner for the cost of moving those utilities.

(d) Any additional right-of-way obtained pursuant to this section which is part of a railroad right-of-way shall be returned to the railroad or its successor in interest when the Department of Transportation and the affected utilities agree that the additional right-of-way is no longer useful for utility purposes and the Department of Transportation determines that it is no longer useful for ~~highway~~ transportation purposes."

SECTION 9. G.S. 136-26 reads as rewritten:

"**§ 136-26. Closing of State ~~highways~~ transportation infrastructure during construction; injury to barriers, warning signs, etc.**

If it shall appear necessary to the Department of Transportation, its officers, or appropriate employees, to close any ~~road or highway~~ transportation infrastructure coming under its

jurisdiction so as to permit of proper completion of work which is being performed, ~~such~~ the Department of Transportation, its officers or employees, may close, or cause to be closed, the whole or any portion of ~~such road or highway~~ transportation infrastructure deemed necessary to be excluded from public travel. While any ~~such road or highway,~~ transportation infrastructure, or portion thereof, is so closed, or while any ~~such road or highway,~~transportation infrastructure, or portion thereof, is in process of construction or maintenance, ~~such~~ the Department of Transportation, its officers or appropriate employees, or its contractor, under authority from ~~such~~ the Department of Transportation, may erect, or cause to be erected, suitable barriers or obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the ~~road or highway,~~transportation infrastructure, or portion thereof, is closed; and may place warning signs, lights and lanterns on ~~such road or highway,~~transportation infrastructure, or portions thereof. When ~~such road or highway~~ infrastructure is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a Class 1 misdemeanor."

SECTION 10. G.S. 136-27.1 reads as rewritten:

"**§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.**

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State ~~highway~~ transportation project right-of-way, that are necessary to be relocated for a State ~~highway~~ transportation improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by county as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census."

SECTION 11. G.S. 136-27.2 reads as rewritten:

"**§ 136-27.2. Relocation of county-owned natural gas lines located on Department of Transportation right-of-way.**

The Department of Transportation shall pay the nonbetterment cost for the relocation of county-owned natural gas lines, located within the existing State ~~highway~~ transportation project right-of-way, that the Department needs to relocate due to a State ~~highway~~ transportation improvement project."

SECTION 12. G.S. 136-28.2 reads as rewritten:

"**§ 136-28.2. Relocated ~~highways;~~transportation infrastructure; contracts let by others.**

The Department of Transportation is authorized to permit power companies and governmental agencies, including agencies of the federal government, when it is necessary to relocate ~~a public highway~~ transportation infrastructure by reason of the construction of a dam, to let contracts for the construction of the relocated ~~highway.~~transportation infrastructure. The construction shall be in accordance with the Department of Transportation standards and specifications. The Department of Transportation is further authorized to reimburse the power company or governmental agency for betterments arising out of the construction of the relocated ~~highway,~~transportation infrastructure, provided the bidding and the award is in accordance with the Department of Transportation's regulations and the Department of Transportation approves the award of the contract."

SECTION 13. G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and women-owned businesses in ~~highway~~ transportation contracts.

(a) It is the policy of this State, based on a compelling governmental interest, to encourage and promote participation by disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, ~~or bridges~~ bridges, and other transportation systems and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and among themselves in all efforts to conduct outreach and to encourage and promote the use of disadvantaged minority-owned and women-owned businesses in these contracts.

(b) At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, ~~or bridges~~ bridges, and other transportation systems and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in ~~highway~~ transportation contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) Based upon the findings of the Department's Second Generation Disparity Study completed in 2004, hereinafter referred to as "Study", the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish annual aspirational goals, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These annual aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with methodology specified in the Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:
(1) "Disadvantaged business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 26.5 or any subsequently promulgated replacement regulation.
(2) "Minority" includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

(d) The Department shall report semiannually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, ~~2009.~~2014."

SECTION 14. G.S. 136-28.6 reads as rewritten:

"**§ 136-28.6. Participation by the Department of Transportation with private developers.**

(a) The Department of Transportation may participate in private engineering and construction contracts for State ~~highways.~~transportation systems.

(b) In order to qualify for State participation, the project must be:
(1) The construction of a ~~street or highway~~ transportation project on the Transportation Improvement Plan adopted by the Department of Transportation; or
(2) The construction of a ~~street or highway~~ transportation project on a mutually adopted transportation plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the right-of-way is furnished without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let for the project.

(e) Department of Transportation participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Counties and municipalities may participate financially in private engineering, land acquisition, and construction contracts for transportation projects ~~pertaining to streets or highways~~ which meet the requirements of subsection (b) of this section within their jurisdiction."

SECTION 15. G.S. 136-28.9 reads as rewritten:

"**§ 136-28.9. Retainage – construction contracts.**

Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and 147-86.11, or any other provision of the law, the Department of Transportation is authorized to enter into trust agreements with banks and contractors for the deposit of retainage and for the payment to contractors of income on these deposits, in connection with ~~highway~~ transportation

construction contracts, in trust accounts with banks in accordance with Department of Transportation regulations, including deposit insurance and collateral requirements. The Department of Transportation may contract with those banks without trust departments in addition to those with trust departments. Funds deposited in any trust account shall be invested only in bonds, securities, certificates of deposits, or other forms of investment authorized by G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for interest to be paid on uninvested cash balances."

SECTION 16. G.S. 136-29 reads as rewritten:

"**§ 136-29. Adjustment and resolution of highway construction contract claim.**

(a) A contractor who has completed a contract with the Department of Transportation to construct a State ~~highway~~ transportation project and who has not received the amount he claims is due under the contract may submit a verified written claim to the State Highway Administrator for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final statement from the Department and shall state the factual basis for the claim.

The State Highway Administrator shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the State Highway Administrator and the contractor. The contractor may appear before the State Highway Administrator, either in person or through counsel, to present facts and arguments in support of his claim. The State Highway Administrator may allow, deny, or compromise the claim, in whole or in part. The State Highway Administrator shall give the contractor a written statement of the State Highway Administrator's decision on the contractor's claim.

(b) A contractor who is dissatisfied with the State Highway Administrator's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the State Highway Administrator's written statement of the decision.

(c) As to any portion of a claim that is denied by the State Highway Administrator, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the State Highway Administrator's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract for State ~~highway~~ transportation construction between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid."

SECTION 17. G.S. 136-35 reads as rewritten:

"**§ 136-35. Cooperation with other states and federal government.**

It shall also be the duty of the Department of Transportation, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads and other transportation systems so as to form a system of intercounty, interstate, and national ~~highways.~~highways and transportation systems. The Department of Transportation may enter into reciprocal agreements with other states and the Federal Highway Administration to perform inspection work and to pay reasonable fees for inspection work performed by others in connection with supplies and materials used in ~~highway~~ transportation construction and repair."

SECTION 18. G.S. 136-44.1 reads as rewritten:

"Article 2A.

State ~~Roads~~ Transportation Generally.

§ 136-44.1. Statewide ~~road~~ transportation system; policies.

The Department of Transportation shall develop and maintain a statewide system of ~~roads and highways~~ roads, highways, and other transportation systems commensurate with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board of Transportation shall formulate general policies and plans for a statewide ~~system of highways.~~transportation system. The Board shall formulate policies governing the construction, improvement and maintenance of ~~roads and highways~~ roads, highways, and other transportation systems of the State with due regard to farm-to-market roads and school bus routes."

SECTION 19. G.S. 136-44.2 reads as rewritten:

"**§ 136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, ~~and~~ State parks road ~~systems.~~systems, and other transportation systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall include state-maintained, non-highway modes of transportation as well.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first reported to the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The

amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

SECTION 20. G.S. 136-44.2C reads as rewritten:

"**§ 136-44.2C. Special appropriations for State construction.**

Special appropriations for the construction of State highways may be used for the planning, design, right-of-way acquisition, and construction of ~~highway~~ transportation projects for the State ~~Highway~~ Transportation System and Federal Aid System, including secondary roads, contained in the Transportation Improvement Program prepared pursuant to G.S. 143B-350(f)(4). Funding from the special appropriations used for secondary road projects in the Transportation Improvement Program is not subject to the allocation formula and restrictions of G.S. 136-44.2, 136-44.2A, or 136-44.5."

SECTION 21. G.S. 136-44.4 reads as rewritten:

"**§ 136-44.4. Annual construction program; State primary and urban systems.**

The Department of Transportation shall develop an annual construction program for the state-funded improvements on the primary and urban system highways and for all other federal-aid construction programs which shall be approved by the Board of Transportation. It shall include a statement of the immediate and long-range goals. The Department shall develop criteria for determining priorities of projects to insure that the long-range goals and the statewide needs as a whole are met, which shall be approved by the Board of Transportation. The annual construction program shall list all projects according to priority. A brief description of each project shall be given, identifying the highway number, county, nature of the improvement and the estimated cost of the project shall be indicated. Other transportation systems shall be similarly identified. Copies of the most recent annual work program shall be made available to any member of the General Assembly upon request. The Department of Transportation shall make annual reports after the completion of the fiscal year to be made available to the legislative committees and subcommittees for highway matters, county commissioners, and other persons upon request. These reports shall indicate the expenditure on each of the projects and the status of all projects set out in the work program."

SECTION 22. The title of Article 3A of Chapter 136 of the General Statutes reads as rewritten:

"Article 3A.

~~Streets and Highways~~ Transportation Systems in and around Municipalities."

SECTION 23. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Local government participation in improvements to the State highway system.**

(a) Municipal Participation Authorized. – A municipality may, but is not required to, participate in the right-of-way and construction cost of a State ~~highway~~ transportation improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for Initiating Participation. – A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department

of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of Participation Authorized. – A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State ~~highway~~ transportation system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose. All improvements to ~~the~~ State ~~highway system~~ transportation systems shall be done in accordance with the specifications and requirements of the Department of Transportation.

(c1) No TIP Disadvantage for Participation. – If a county or municipality participates in a State ~~highway~~ transportation system improvement project, as authorized by this section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(c2) Distribution of State Funds Made Available by County or Municipal Participation. – Any State or federal funds allocated to a project that are made available by county or municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on Agreements. – The Department shall not enter into any agreement with a county or municipality to provide additional total funding for highway construction in the county or municipality in exchange for county or municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) Authorization to Participate in Development-Related Improvements. – When in the review and approval by a local government of plans for the development of property abutting ~~the~~ a State ~~highway~~ transportation system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the local government is authorized to construct, or have constructed, said improvements to the State ~~highway~~ transportation system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, ~~and~~ drainage ~~facilities.~~facilities, and other transportation system improvements. All improvements to ~~the~~ a State ~~highway~~ transportation system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. – Pursuant to an agreement with the Department of Transportation, a county or municipality may reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a ~~street or~~ street, highway improvement ~~projects~~ projects, or other transportation system improvements approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

(e1) Reimbursement Procedure. – Upon request of the county or municipality, the Department of Transportation shall allow the local government a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs necessary for the project. The Department of Transportation shall not charge a local government any interest during the initial three years.

(f) Report to General Assembly. – The Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between counties, municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Local Government Acquisition of Rights-of-Way. – In the acquisition of rights-of-way for any State ~~highway system street or~~ street, highway, or other transportation project, the county or municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, counties and municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "county," "municipality" or local governing body, and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the county or municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. – In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State ~~highway~~ transportation system.

(i) Changes to Local Government Participation Agreement. – Either the local government or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Local Governments Party to Rights-of-Way Proceeding. – Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State ~~highway system street or highway~~ transportation system shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Repealed by Session Laws 2008-180, s. 6, effective August 4, 2008."

SECTION 24. G.S. 136-66.5 reads as rewritten:

"**§ 136-66.5. Improvements in urban ~~area streets~~ areas to reduce traffic congestion.**

(a) The Department of Transportation is authorized to enter into contracts with municipalities for ~~highway~~ improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of ~~traffic~~ people and goods in urban areas. In connection with these contracts, the Department of Transportation and the municipalities are authorized to enter into contracts for improvement projects on the municipal system of streets, and pursuant to contract with the municipalities, the Department of Transportation is authorized to construct or to let to contract the said improvement projects on streets on the municipal street system or other transportation system; provided that no portion of the cost of the improvements made on the municipal ~~street~~ system shall be paid from Department of Transportation funds except the proportionate share of funds received from the ~~Federal Highway Administration~~ U.S. Department of Transportation and allocated for the purposes set out in section 135 of Title 23 of the United States Code. Pursuant to contract with the Department of Transportation, the municipalities may construct or let to contract the said improvement projects on the municipal ~~street~~ system and the Department of Transportation is authorized to pay over to the municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of the United States Code; provided that no portion of the costs of the improvements made on the

municipal ~~street~~ system shall be paid for from the State Highway Fund except those received from the ~~Federal Highway Administration~~ U.S. Department of Transportation and allocated for the purpose set out in section 135 of Title 23 of the United States Code.

(b) The municipalities are authorized to enter into contracts with the Department of Transportation for improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffic in urban areas, on the State highway system streets within the municipalities with the approval of the ~~Federal Highway Administration.~~U.S. Department of Transportation. Pursuant to contract for the foregoing improvement projects, the municipalities are authorized to construct or let to contract the said improvement projects and the Department of Transportation is authorized to reimburse the municipalities for the cost of the construction of the said improvement projects.

(c) The municipalities in which improvements are made pursuant to section 135 of Title 23 of the United States Code shall provide proper maintenance and operation of such completed projects and improvements on the municipal system streets and other transportation infrastructure or will provide other means for assuring proper maintenance and operation as is required by the Department of Transportation. In the event the municipality fails to maintain such project or provide for their proper maintenance, the Department of Transportation is authorized to maintain the said projects and improvements and deduct the cost from allocations to the municipalities made under the provisions of G.S. 136-41.1."

SECTION 25. G.S. 136-102.2 reads as rewritten:

"**§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing record of results with Department of Transportation.**

No person, firm or corporation shall make any test drilling or boring upon the right-of-way of any ~~road or highway,~~transportation system, under the jurisdiction of the Department of Transportation, until written authorization has been obtained from the owner or the person in charge of the land on which the highway easement is located. A complete record showing the results of the test drilling or boring shall be filed forthwith with the chairman [Secretary] of the Department of Transportation and shall be a public record. This section shall not apply to the Department of Transportation making test drilling or boring for highway purposes only."

SECTION 26. G.S. 136-103.1 reads as rewritten:

"**§ 136-103.1. Outside counsel.**

The Attorney General is authorized to employ outside counsel as he deems necessary for the purpose of obtaining title abstracts and title certificates for ~~highway~~ transportation system rights-of-way and for assistance in the trial of condemnation cases involving the acquisition of rights-of-way and other interests in land for the purpose of ~~highway~~ transportation construction. Compensation, as approved by the Attorney General, shall be paid out of the appropriations from the Highway Fund."

SECTION 27. G.S. 136-177 reads as rewritten:

"**§ 136-177. Limitation on funds obligated from Trust Fund.**

In a fiscal year, the Department of Transportation may not obligate more Trust Fund revenue, other than revenue allocated for city streets under G.S. 136-176(b)(3) or secondary roads under G.S. 136-176(b)(4) and G.S. 20-85(b), to construct or improve highways and other forms of transportation than the amount indicated in the following table:

Fiscal Year	Maximum Expenditure
1989-90	$200,000,000
1990-91	250,000,000
1991-92	300,000,000
1992-93	400,000,000
1993-94	500,000,000
1994-95 and following years	Unlimited

The amount of revenue credited to the Trust Fund in a fiscal year under G.S. 136-176(a) that exceeds the maximum allowable expenditure set in the table above may be used only for preliminary planning and design and the acquisition of rights-of-way for scheduled highways and highway improvements to be funded from the Trust Fund."

SECTION 28. This act becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 706
PROPOSED COMMITTEE SUBSTITUTE H706-CSRW-36 [v.1]

5/6/2009 10:39:27 PM

Short Title: DMV Handicap Placard Enforcement. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO ENSURE THE ACCESSIBILITY OF HANDICAPPED PARKING IN NORTH CAROLINA BY REQUIRING AN EXPIRATION DATE VISIBLE FROM AT LEAST TWENTY FEET ON ALL HANDICAPPED PLACARDS, TO ENSURE INCREASED ENFORCEMENT AND COLLECTION OF EXPIRED OR REVOKED PLACARDS BY REQUIRING THAT PLACARDS DISPLAY THE MONTH AND YEAR OF EXPIRATION, TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO ISSUE HANDICAPPED PLACARD REGISTRATION CARDS, AND TO REQUIRE THAT THE PERSON TO WHOM THE PLACARD IS ISSUED BE THE OPERATOR OF OR A PASSENGER IN THE VEHICLE IN WHICH THE PLACARD IS DISPLAYED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.5(4) reads as rewritten:

"(4) "Removable windshield placard" means a two-sided, hooked placard which includes on each side:

a. The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

b. An identification number;

c. An expiration ~~date; and~~ date that is visible from at least 20 feet, and the month and year of expiration; and

d. The seal or other identification of the issuing authority."

SECTION 2. G.S. 20-37.6(c) reads as rewritten:

"(c) Handicapped Drivers and Passengers; Distinguishing Placards. – A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the

rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars ($5.00) per placard. The Division shall issue a placard registration card with each placard issued to a handicapped person. The registration card shall bear the name of the person to whom the placard is issued, the person's address, the placard number, and an expiration date. The registration card shall be in the vehicle in which the placard is being used, and the person to whom the placard is issued shall be the operator or a passenger in the vehicle in which the placard is displayed."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 828:
Bidding Process Changes/Maintenance and Op

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 7, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S828-CSSU-41		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 828 does the following three things:***

- ***Changes the maximum dollar amount at which contracts for highway maintenance may be let using an informal bid process from $1,200,000 or less to $1,200,000 per year or less, and changes the maximum dollar amount for small project bidding for maintenance projects from $500,000 or less to $500,000 per year or less.***
- ***Extends the sunset on the Department of Transportation's Disadvantaged Minority-Owned and Women-Owned Businesses Program from August 31, 2009, to August 31, 2014.***
- ***Updates various statutes in Chapter 136 to reflect the Department's focus on all transportation infrastructure, rather than just roads and highways.***

[As introduced, this bill was identical to H1097, as introduced by Rep. Martin, which is currently in House Transportation, if favorable, State Government/State Personnel.]

BILL ANALYSIS: The PCS for Senate Bill 828 makes the following changes to Chapter 136 of the General Statutes:

Informal bid process for highway maintenance. Under current law, contracts for highway construction, maintenance, and repair that are $1,200,000 or less may be let using an informal bid process. The PCS would allow contracts for maintenance that are $1,200,000 *per year* or less to be let using the informal bid process.

G.S. 136-28.10 allows for projects of $500,000 or less to be awarded after soliciting at least three informal bids from Small Business Enterprises. The PCS would allow projects for maintenance that are $500,000 or less *per year* to be let through that informal bid process.

Continue Disadvantaged Minority-Owned and Women-Owned Businesses Program. The Department's program was established pursuant to G.S. 136-28.4, which will expire August 31, 2009. The PCS would extend the sunset to August 31, 2014.

Update Chapter 136/Transportation Infrastructure. The PCS would update the name of Chapter 136 from "Roads and Highways" to "Transportation", provide a definition of "transportation system" to include all modes of transportation infrastructure, and update terminology throughout the Chapter.

EFFECTIVE DATE: The act becomes effective July 1, 2009.

S828-SMSU-66(CSSU-41) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 357
PROPOSED COMMITTEE SUBSTITUTE S357-CSRL-31 [v.2]

5/6/2009 5:00:49 PM

Short Title: Utilities/Regulation of Pole Attachments. (Public)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-55. Regulation of pole attachments.**

(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize their poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation, which is to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(b) Following a request from a communications service provider, a municipality or membership corporation shall negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts or conduit that it owns or controls. Following a request from a party to an existing agreement made pursuant to the terms of the agreement or made within 120 days prior to or following the end of the term of the agreement, a communications service provider, and the municipality or membership corporation which is a party to that agreement shall negotiate concerning the rates, terms and conditions for the continued use of or attachment to the poles, ducts or conduits owned or controlled by one of the parties to the agreement. The negotiations shall include matters customary to such negotiations, including a

fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement or repair of installed facilities for safety reasons. Upon reasonable request, a party shall state, in writing, its objections to any proposed rate, terms and conditions of the other party.

(c) In the event the parties are unable to reach an agreement within 90 days, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90 day period, either party may bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The parties shall identify with specificity in their respective pleadings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed one hundred eighty (180) days of the commencement of the action, (ii) resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just and reasonable rates, terms and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) apply any new rate adopted as result of the action retroactively to the date immediately following the expiration of the 90 day negotiating period or initiation of the lawsuit, whichever is earlier. Prior to commencing any action under this subsection, a party must pay any undisputed fees related to the use of poles, ducts or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation, and, in any action brought under this subsection, the court may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended.

(d) In the absence of agreement otherwise, in the event that the lines, equipment, or attachments of a communications service provider that are attached to the poles, ducts or conduits of a municipality or membership corporation do not comply with applicable safety rules and regulations, the municipality or membership corporation may provide written notice of the non-compliant lines, equipment or attachments, and make demand that the communications service provider bring such lines, equipment and attachments into compliance with the specified safety rules and regulations within 90 days of the date of the notice and demand. Unless the communications service provider, within those 90 days, demonstrates that its lines; equipment and attachments are in compliance with all applicable safety rules and regulations, or brings its lines, equipment and attachments into compliance with the specified applicable safety rules and regulations, the municipality or membership corporation shall be entitled to take such remedial actions as are reasonably necessary to bring the lines, equipment and attachments of the communications service provider into compliance, including removal of the lines, equipment or attachments should removal be required to achieve compliance with the applicable safety rules and regulations. A municipality or membership corporation that removes or brings into compliance the non-compliant lines, equipment or attachments of a communications service provider shall be entitled to recover its reasonable and actual costs for such activities from the communications service provider, and unless otherwise agreed by all of the parties, the communications service provider shall reimburse the municipality or membership corporation within 45 days of being billed for such costs. Nothing herein shall prevent a municipality, or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or property.

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide the following: (i) telephone service as a

public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or cooperatively organized entity; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(f) The Business Court may adopt such rules as it deems necessary to implement its jurisdiction and authority under this section.

(g) Nothing herein shall preclude a party from bringing civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement concerning the rate, terms and conditions for the use of or attachment to the poles, ducts or conduit of a municipality or membership corporation."

SECTION 2. This act does not constitute certification of State regulation of pole attachments for purposes of section 224 of the Communications Act of 1934, as amended. If a court of competent jurisdiction determines that this act is tantamount to certification, this act shall become null and void.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 686

Short Title:	Electronic Reporting of Abandoned Property.	(Public)
Sponsors:	Senators Foriest; Apodaca, Atwater, Bingham, Brunstetter, Forrester, and Rouzer.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE ELECTRONIC FILING OF ABANDONED PROPERTY REPORTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-60(a) reads as rewritten:

"(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting less than 50 property owner records shall file the report in paper form or may, at their option, file the report in such format and electronic media as prescribed by the Treasurer. Holders reporting 50 or more property owner records shall file the report in a format prescribed by the National Association of Unclaimed Property Administrators (NAUPA) or in a format approved by the Treasurer, and on nationally and commercially recognized electronic media, which shall be provided upon request of the holder and made available on an Internet Web site. In addition, all holders filing electronically shall provide an owner detail report, in .pdf file format or paper copy, together with the affidavit required by subsection (f) of this section."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 686:
Electronic Reporting of Abandoned Property

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 27, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 686 would require the holder of abandoned property with fifty or more owner records to file electronically with the State Treasurer. The bill would allow holders with less than fifty property owner records to file electronically and to allow all holders who file reports electronically to also file a signed affidavit electronically.***

CURRENT LAW:

Under current law, a holder of abandoned property is required to file a report with the Treasurer concerning the property. The report must include:

1. A description of the property.
2. Identifying information about the property owner if the property value is $50.00 or more, except for traveler's checks and money orders.
3. An aggregated amount of items valued under $50.00 each.
4. In the case of an annuity or life insurance policy valued at $50.00 or more, the name and address of the insured and the beneficiary.
5. The date the property became payable and the date of the last communication with the owner.
6. Other information deemed necessary by the Treasurer.

The holder of the property must also file an affidavit that the holder has made a good faith effort to locate the apparent owner as provided by law.

BILL ANALYSIS:

Senate Bill 686 requires that holders who report 50 or more property owner records must file the report electronically in a format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically, and any holder who files the report electronically may also file the signed affidavit electronically.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S686-SMRO-38(e1) v1

SENATE BILL 425

Short Title:	Fair Housing Act Amendment.	(Public)
Sponsors:	Senators Kinnaird; Berger of Franklin, Bingham, Boseman, Graham, Jenkins, Jones, Malone, McKissick, Nesbitt, Purcell, and Rand.	
Referred to:	Commerce.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE FAIR HOUSING ACT TO PROHIBIT DISCRIMINATION ON THE BASIS OF RECEIPT OF HOUSING ASSISTANCE AND TO APPROPRIATE FUNDS TO THE NORTH CAROLINA HUMAN RELATIONS COMMISSION TO ADMINISTER THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41A-3 is amended by adding a new subdivision to read:

"(4a) "Housing assistance" means a subsidy provided to defray the cost of rental housing for a household that has a member who is either: (i) age 62 or over or (ii) has been determined eligible for a government-funded disability program, such as veterans benefits, social security disability, or supplemental security income."

SECTION 2. 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, housing assistance, 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~~ the person's attention, or refuse to permit ~~him~~ the person 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, housing assistance, 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, housing assistance, 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, housing assistance, 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."

SECTION 3. G.S. 41A-5 reads as rewritten:

"**§ 41A-5. Proof of violation.**

(a) It is a violation of this Chapter if:

(1) A person by ~~his~~ the person's act or failure to act intends 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, housing assistance, or familial status. 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, housing assistance, or familial status. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that ~~his~~ the person's action or inaction was motivated and justified by business necessity.

(b) It shall be no defense to a violation of this Chapter that the violation was requested, sought, or otherwise procured by another person.

(c) It is not a violation of this Chapter if the housing assistance on which the transaction is dependent is not authorized for the transaction within 14 days of the date of the landlord's approval of the tenant."

SECTION 4. G.S. 41A-6(a) reads as rewritten:

"(a) The provisions of G.S. 41A-4, except for ~~subdivision (a)(6),~~ G.S. 41A-4(a)(6), do not apply to the following:

(1) The rental of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the lessor or a member of ~~his~~ the lessor's family resides in one of the housing accommodations;

(2) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of ~~his~~ the lessor's family resides in the house;

(3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, national origin, handicapping condition, housing assistance, or familial status;

(4) Private clubs, not in fact open to the public, which incident to ~~their~~ the private clubs' primary purpose or purposes provide lodging, which ~~they~~ the private clubs own or operate for other than a commercial purpose, to ~~their~~ the private clubs' members or give preference to ~~their~~ the private clubs' members;

(5) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property; and

(6) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 979, s. 4.

(7) The sale, rental, exchange, or lease of commercial real estate. For the purposes of this Chapter, commercial real estate means real property which is not intended for residential use."

SECTION 5. Of the funds appropriated to the Department of Administration for the 2009-2010 fiscal year, the sum of fifty thousand dollars ($50,000) is allocated for use by the North Carolina Human Relations Commission in handling additional claims on account of the addition of housing assistance status by this act.

SECTION 6. This act becomes effective October 1, 2009, and applies to actions taken or not taken on or after that date.

SENATE BILL 425:
Fair Housing Act Amendment

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. Kinnaird	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 425 amends the State Fair Housing Act to prohibit discrimination on the basis of receipt of housing assistance.

CURRENT LAW: Currently, the State Fair Housing Act prohibits discrimination in real estate transactions on the basis of the following: race, color, religion, sex, national origin, handicapping condition or familial status. It is a violation of the State Fair Housing Act to discriminate against a person on these conditions. The State Fair Housing Act exempts religious institutions or organizations, or charitable or educational organizations operated, supervised or controlled by religious institutions or organizations, which give preference to members of the same religion in a real estate transaction, as long as membership in the religion itself is not restricted by race, color, sex, national origin, handicapping condition or familial status.

BILL ANALYSIS:

Section 1 defines the term "housing assistance" to mean a subsidy provided to defray the cost of rental housing for a household that has a member who is either (i) age 62 or over, or (ii) has been determined eligible for a government funded disability program, such as veterans benefits, social security disability or supplemental security income."

Section 2 adds the term "housing assistance" to the list of prohibited discriminatory practices under the State Fair Housing Act.

Section 3 adds the term "housing assistance" to the list of violations under the State Fair Housing Act. It is not considered a violation of this act if a landlord turns down a qualified tenant when the tenant is unable to secure housing assistance within 14 days of being approved by the landlord.

Section 4 adds the term "housing assistance" to the list of exceptions religious institutions or organizations have, on the condition the religion itself does not discriminate against those receiving housing assistance.

Section 5 appropriates fifty thousand dollars ($50,000) to the Department of Administration for use by the North Carolina Human Relations Commission in handling additional claims created by the addition of housing assistance to this law.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to actions taken or not taken on or after that date.

O. Walker Reagan substantially contributed to this summary.

S425-SMTD-53(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 425 DATE 5/7/09

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Garrou
Sen.)

1 moves to amend the bill on page 4, lines 15 - 18

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the lines

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SIGNED Linda Garrou

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SB425 – Fair Housing Act Amendment: ***Forced Participation in the Section 8 Program***

By Apartment Association of North Carolina

- Some advocates are attempting to make the North Carolina multifamily rental sector shoulder a disproportionate burden of the state's affordable housing crisis by making it "discriminatory" for a housing provider to elect not to participate in the voluntary Tenant-Based Section 8 Program.
- Apartment Association of North Carolina's Goal: to make Section 8 voucher holders indistinguishable from non-subsidized residents. Such transparency protects both residents and property owners from being stigmatized because they participate in the program.
- By refusing to make changes to conform Section 8 to industry practices and state and local law, HUD is standing in the way of increasing owner participation in the program. Making Section 8 voucher administration more market-like, and not passing a state "source of income" statute, is the proper way to improve the workability of the federal government's major housing assistance program.
- There are unique administrative burdens for housing providers that accept Section 8 vouchers:
  - The housing provider must enter into a three-way contract between them, the housing authority providing the voucher and the resident.
  - The housing provider is required to add a non-negotiable three-page HUD addendum to the lease contract.
  - The housing provider is not allowed to terminate a Section 8 lease for certain enumerated reasons which limit the property owner's ability to maintain supervision and control over its quality assurance standards.
  - The housing provider has to comply with maintenance, utilities and other service standards required by HUD that are not required of non-Section 8 housing providers.

- Twelve states (CA, CT, ME, MA, MN, NJ, ND, OK, OR, UT, VT, WI) have amended their housing anti-discrimination laws to include source of income. Note that none of these border North Carolina or are even in the Southeast. Here is a comment from our colleague in Utah: *"One consequence is that landlords have to work with local housing authorities regardless of their level of competence. This incentivizes PHA's to provide worse customer service, be less responsive to landlords, and be less accommodating. We are considering pushing for a repeal of this part of the law".*
- The 1974 federal Community Development Act set in motion the Section 8 program. To our knowledge, in the 35 years since, Congress has never seriously considered adding Source of Income as a protected Fair Housing Class. It would be very interesting to poll the 15-member North Carolina Congressional delegation to gauge their support for such an addition to federal law. We don't think a majority would support it.
- SB 425 would cover one protected class (disabled) as well as an unprotected class (age). Targeting source of income only for the elderly or disabled is a neutral policy that has a disparate impact on who could be the primary recipients of rental subsidies: families with children.
- Housing discrimination unfortunately exists in North Carolina and the North Carolina Fair Housing Act and the N.C. Human Relations Commission should continue to focus on the current protected classes that face this discrimination via appropriate responses and punitive actions as needed.
- The Section 8 Rent Subsidy was envisioned as a voluntary way to provide greater housing opportunities to consumers/spread public subsidies in the private housing market to a broader geography. It was never intended as a Civil Rights Law, and this is really the AANC's top objection - government should not mandate/interfere with private housing market transactions in this manner.

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.

SENATE BILL 465:
Amend State Fair Housing Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

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-78(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 810
PROPOSED COMMITTEE SUBSTITUTE S810-CSRO-33 [v.1]

5/6/2009 9:11:15 PM

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 DEVELOPMENTS 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."

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. 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. However, 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.

SENATE BILL 810:
Affordable Housing/No Discrimination

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 6, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S810-CSRO-33		

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 PCS makes technical changes.

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.

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.

SENATE BILL 648

Short Title:	Allow DOT to Provide Direct Funding.	(Public)
Sponsors:	Senator Goss.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO PARTNER WITH PRIVATE DEVELOPERS ON TRANSPORTATION IMPROVEMENT PROJECTS AND PROVIDE FUNDING DIRECTLY TO THE PRIVATE DEVELOPER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-28.6A. Partnerships with private developers.**

(a) When in the best interest of the State, the Department may enter into a contract with a private developer to accomplish the engineering, design, or construction of improvements to the State highway system.

(b) The Department is authorized to establish policies and promulgate rules providing for its participation in contracts for projects performed on or abutting a state highway or on a facility planned to be added to the State highway system for purposes of completing incidental work on the State highway system.

(c) Any project funded or constructed under this section shall be subject to the following restrictions:

(1) The Department's participation shall be limited to the lesser of ten percent (10%) of the amount of the engineering contract and any construction contract let by the developer for the project or two hundred fifty thousand dollars ($250,000). However, under no circumstances shall participation in the contracts by the Department exceed costs associated with normal practices of the Department.

(3) Plans for the project must meet established standards and shall be approved by the Department.

(4) Projects shall be constructed in accordance with the plans and specifications approved by the Department.

(d) The Secretary shall report annually, not later than March 1, in writing to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee on all agreements entered into between the Department and a private developer for participation in private engineering and construction contracts under this section."

SECTION 2. This act is effective when it becomes law. This act shall expire on December 31, 2011.

SENATE BILL 648:
Allow DOT to Provide Direct Funding

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 7, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 648 would authorize the Department of Transportation to enter into contracts with private developers to engineer, design, or construct improvements to the State highway system. The bill would be effective when it becomes law and expire on December 31, 2011.***

[As introduced, this bill was identical to H1004, as introduced by Reps. Carney, Cole, which is currently in House Transportation, if favorable, Appropriations.]

BILL ANALYSIS: Senate Bill 648 would authorize the Department of Transportation to enter into contracts with private developers to engineer, design, or construct highway improvements as follows:

- The Department would establish policies and rules for its participation in contracts for projects on or abutting a State highway, or on a facility planned to be added to the State highway system, for purposes of completing incidental work on the State highway system.
- The Department's participation would be limited to the lesser of 10% of the amount of the engineering contract and any construction contract let by the developer for the project, or $250,000.
- Participation in these contracts could not exceed costs associated with normal practices of the Department.
- Plans for a project would have to meet established standards and be approved by the Department, and projects would have to be constructed in accordance with plans and specifications approved by the Department.

The Secretary would be required to provide an annual written report to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee on all agreements entered into between the Department and a private developer pursuant to this act.

EFFECTIVE DATE: The act would be effective when it becomes law and expire on December 31, 2011.

S648-SMSU-65(e1) v3

SENATE BILL 931

Short Title:	Commercial Drivers License Changes.	(Public)
Sponsors:	Senator Goss.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RECIPROCITY TO COMMERCIAL DRIVERS LICENSE HOLDERS FROM MEXICO, TO EXPAND THE DEFINITION OF CONVICTION FOR OUT-OF-STATE VIOLATIONS, TO EXPAND THE DEFINITION OF EMPLOYER WITH REGARDS TO COMMERCIAL DRIVERS LICENSES, TO ADD A DISQUALIFYING VIOLATION TO COMMERCIAL DRIVERS LICENSES, TO INCREASE CIVIL PENALTIES, TO EXPAND EMPLOYER REPORTING RESPONSIBILITIES, AND TO MODIFY REQUIREMENTS FOR CONVICTIONS TEN YEARS OLD OR OLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a)b. reads as rewritten:

"b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea.
6. Any prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle."

SECTION 2. G.S. 20-4.01(7b) reads as rewritten:

"(7b) Employer. – Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor ~~vehicle.~~vehicle and would be subject to the alcohol and controlled substance testing provisions of 49 C.F.R. § 382 and also includes any consortium or third-party administrator administering the alcohol and controlled substance testing program on behalf of owner-operators subject to the provisions of 49 C.F.R. § 382."

SECTION 3. G.S. 20-17.4 is amended by adding a new subsection to read:

"(c1) Life. – A person shall be disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement, if that person has had a commercial drivers license reinstated in the past and is convicted of another major disqualifying offense as defined in 49 C.F.R. § 383.51(b)."

SECTION 4. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

Except for offenses occurring in a commercial motor vehicle, offenses by the holder of a commercial drivers license involving noncommercial motor vehicle, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 5. G.S. 20-37.12(d) reads as rewritten:

"(d) Any person who is not a resident of this State, who has been issued a commercial drivers license by his state of residence, or who holds a valid Mexican Licensia Federal de Conductor, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State."

SECTION 6. G.S. 20-37.19(b) reads as rewritten:

"(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or

(2) In which the driver has more than one driver license.

(3) In which the driver, the commercial motor vehicle being operated, or the motor carrier operation, is subject to an out-of-service order."

SECTION 7. G.S. 20-37.21(a) reads as rewritten:

"(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense. In addition, ~~upon conviction,~~ the person shall be subject to a civil penalty ~~of not less than one thousand one hundred dollars ($1,100) for the first offense and not more than two thousand seven hundred fifty dollars ($2,750) for a second or subsequent offense.~~ pursuant to the provisions of 49 C.F.R. § 383.53(b)."

SECTION 8. Sections 1, 2, and 5 of this act are effective when this act becomes law. The remainder of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 931:
Commercial Drivers License Changes

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 7, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 931 makes the following changes to the commercial drivers license (CDL) statutes:***

- ***Expands the definition of "conviction" for out-of-State violations to include a prayer for judgment continued.***
- ***Amends the definition of "employer" to specify it would be someone who is subject to alcohol and drug testing provisions under federal law, and including a consortium or third-party administrator.***
- ***Provides for disqualification for life, without possibility of reinstatement, if the person has had a CDL reinstated in the past and is convicted of another major disqualifying offense.***
- ***Allows 10-year-old convictions to be considered by the Division in determining suspensions or revocations if the offense was committed by a holder of a CDL involving a noncommercial motor vehicle.***
- ***Allows a person who holds the equivalent of a CDL from Mexico to operate a commercial motor vehicle in this State.***
- ***Prohibits an employer from knowingly allowing a driver to operate a commercial motor vehicle when the driver, the commercial motor vehicle, or the motor carrier operation is subject to an out-of-service order.***
- ***Increases the civil penalty applicable to a person who drives a commercial motor vehicle without a CDL.***

[As introduced, this bill was identical to H879, as introduced by Rep. Cole, which is currently in House Transportation, if favorable, Finance.]

BILL ANALYSIS: Senate Bill 931 would amend the motor vehicle statutes as they apply to commercial motor vehicles in the following ways:

Definition of "conviction". The bill would amend the definition of "conviction" as it applies to out-of-State violations to include a prayer for judgment continued if the offender holds a CDL or if the offense occurred in a commercial motor vehicle. Under current law, the definition as it applies to in-State violations includes a prayer for judgment continued.

Definition of "employer". The definition of "employer" under current law is a person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle. The bill would add to the definition that the person would also be someone who is subject to alcohol and drug testing provisions under federal law. It would also include any consortium or third-party administrator who provides or coordinates the alcohol and drug testing program.

Disqualification for life. The bill would require disqualification from driving a CDL for life, without the possibility of reinstatement, if that person has been reinstated before and is convicted of another major disqualifying offense as defined by federal law (would include operating a motor vehicle under

the influence of drugs or alcohol, leaving the scene of an accident, using the vehicle to commit a felony, and causing a fatality through negligent operation of a commercial motor vehicle.)

Ten-year-old convictions. G.S. 20-36 provides that the Division generally may not consider a motor vehicle violation more than ten years after the date of conviction when deciding on suspensions or revocations, but it may consider offenses occurring in a commercial motor vehicle. The bill would also allow the Division to consider a ten-year-old conviction for offenses by the holder of a CDL involving a noncommercial motor vehicle.

Reciprocity for Mexican CDL. Under current law, a person who holds a valid CDL from another state is allowed to operate a commercial motor vehicle in North Carolina without further examination or licensure. The bill would allow a person who holds a valid Mexican Licensia Federal de Conductor to do the same.

Employer permitting a driver to operate when out-of-service. The bill would prohibit an employer from knowingly allowing a driver to drive a commercial motor vehicle when the driver, the vehicle, or the motor carrier operation is subject to an out-of-service order. The penalty for violation would be an infraction with a fine no less than $500 and no more than $1,000. There would be an additional civil penalty upon conviction of no less than $2,750 and no more than $11,000.

Increase penalty for driving without a CDL. Under current law, the penalty for driving a commercial motor vehicle without the required CDL is a Class 3 misdemeanor and a fine no less than $250 for a first offense and no less than $500 for a second or subsequent offense. In addition the person is subject to a civil penalty upon conviction of no less than $1,100 for the first offense and no less than $2,750 for the second or subsequent offense. The bill would change the applicable civil penalty to the civil penalty that applies under the federal law, which would be no less than $2,500 for the first offense and no less than $5,000 for a second or subsequent offense.

EFFECTIVE DATE: The sections of the bill amending definitions of "conviction" and "employer" and the section providing reciprocity for CDL holders from Mexico are effective when they become law. The remainder of the act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

S931-SMSU-67(e1) v2

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 12, 2009	11:00 AM - 1:00 PM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 6	Beach Plan and Ins. Rate and Deductible Stay.	Senator Boseman
SB 18	Amend Cemetery Act.	Senator Goss
SB 476	Create Titling Categories-Replica/Street Rod.	Senator East
SB 534	Healthy Families and Healthy Workplaces Act.	Senator Dorsett
SB 607	Disapprove Building Code Council Rule.	Senator Dorsett
SB 649	Modify Speed Zone Restrictions.	Senator Goss
SB 660	Auto Insurance/Diminution in Value.	Senator Rucho
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Senator Foriest
SB 698	City/County Fee Increase on Internet.	Senator Boseman
SB 795	Real Estate Disclosure/Military Installation.	Senator Rand
SB 811	Fuel Rationing Authority for Governor.	Senator McKissick
SB 820	Create New Titling Categories.	Senator Hartsell
SB 887	Amend Electronics Recycling Law.	Senator Vaughan
SB 889	Utilities/Carrier of Last Resort.	Senator Vaughan
SB 893	Workers' Comp Self-Insurance Security	Senator Hartsell

	Ass'n.	
SB 911	North Carolina Building Code/Council Changes.	Senator Clodfelter
SB 913	Clarify Motor Vehicle Franchise Laws.	Senator Hoyle
SB 914	Clarify MV Dealer Termination Assistance.	Senator Hoyle
SB 916	Tenant Security Deposit/Interest-Bear. Acct.	Senator Dorsett
SB 974	Consumer Economic Protection Act of 2009.	Senator Rand
SB 982	Small Business Assistance Fund.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Tuesday, May 12, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m., Tuesday, May 12, 2009, in Room 1027 of the Legislative Building. Senator R.C. Soles presided. Twenty-six members of the committee were present.

North Carolina Golf Association.

Chris Valauri, lobbyist for the Carolina's Golf Course Superintendents Assn., was recognized. The Golf Association will present at a later date.

S.B. 974 – Consumer Economic Protection Act of 2009.

Senator Rand was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS enacts the Consumer Economic Protection Act of 2009. Roy Cooper, NC Attorney General, was recognized to speak in favor of the bill. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 982 – Small Business Assistance Fund.

Senator Jenkins was recognized to explain the bill. Senator Jenkins moved to adopt the PCS for discussion and the motion carried. The PCS enacts the Small Business Assistance Act of 2009, establishes the Small Business Jobs Preservation Fund in the Office of State Budget and Management with related programs coordinated by a technical assistance provider, and appropriates funds. Senator Garrou offered an amendment that deletes Section 3 and moved for its approval. The motion carried. Senator Jenkins then offered an amendment with a technical correction. He motioned for it approval and the motion carried. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS, the summary and the amendments is attached.

S.B. 18 – Amend Cemetery Act.

Senator Goss was recognized to explain the bill and moved to adopt the PCS. The PCS amends the NC Cemetery Act by requiring proof of a sufficient trust fund or surety bond prior to approving a change of control of a cemetery company, changes the investments options for perpetual care trust funds, requires cemetery companies to list the cost of opening and closing a grave space as part of the contract, prohibits a cemetery company from requiring a purchases of a grave space to purchase a vault from a particular seller, increase the extension that may be given to a cemetery company for completion of construction of mausoleums, eliminates the ability to post bonds in lieu of deposits to trust accounts, and creates the Legislative Study Commission on the North Carolina Cemetery Act. Senator Stevens was recognized for a brief summary of the Commerce Subcommittee and spoke in favor of the bill. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 6 – Beach Plan and Ins. Rate and Deductible Stay.

Senator Boseman was recognized to explain the bill and moved to adopt the PCS. The PCS clarifies the authority of the ABC Commission to adopt rules concerning private clubs. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 913 – Clarify Motor Vehicle Franchise Laws.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS clarifies motor vehicle dealers and manufacturers licensing laws. For the record, Senator Rand recused himself from discussion and vote. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 914 – Clarify MV Dealer Termination Assistance.

Senator Hoyle was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS clarifies dealer termination assistance rights. For the record, Senator Rand recused himself from discussion and vote. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 893 – Workers' Comp Self-Insurance Security Ass'n.

Senator Hartsell was recognized to explain the bill. Senator Hoyle moved to adopt the PCS. The motion carried. The PCS allows the North Carolina Self-Insurance Security Association to collect group self-insurer assessments; excludes from participation in the association aggregate security system individual self-insurers that fail to submit certain financial information; and adjusts deposit requirements for all individual self-insurers. Senator Hunt moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 811 – Fuel Rationing Authority for Governor.

Senator McKissick was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS authorizes the Governor to impose fuel rationing measures during a state of disaster, a local state of emergency, or an abnormal market disruption. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 660 – Auto Insurance/Diminution of Value.

Senator Rucho was recognized to explain the bill. He moved to adopt the PCS for discussion and the motion carried. The PCS provides an alternative method of determining property damages as a part of motor vehicle liability insurance. Jennifer Cohen, Executive Director of the Insurance Federation of NC, was recognized to speak in opposition to the bill. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 607 – Disapprove Building Code Council Rule.

Senator Dorsett was recognized to explain the bill and moved to adopt the PCS for discussion. The PCS directs the North Carolina Building Code Council to adopt additional amendments to conform the accessibility provisions of the International Building Code to the North Carolina Accessibility Code. Annaliese Dolph, Disability Rights NC, was recognized to speak in favor of the bill and answer questions. John Porter, President of the Apartment Association of North Carolina, was recognized to speak in opposition to the bill and answer questions. Senator Dorsett moved for a favorable report and the motion did not carry. A copy of the PCS and the summary is attached.

S.B. 916 – Tenant Security Deposit/Interest-Bear Acct.

Senator Dorsett was recognized to explain the bill and moved to adopt the PCS for discussion. The PCS provides that landlords shall deposit all tenant security deposits in an interest-bearing trust account and the interest shall be remitted to the North Carolina Housing Trust Fund. Bill Rowe, General Counsel with the NC Justice Center was recognized to speak in favor of the bill and answer questions. Rick Zechini, a lobbyist with the NC Realtors Association, was recognized to speak in opposition to the bill and answer questions. David Crawford, Executive Vice President of AIA North Carolina, was recognized to speak in opposition to the bill. Senator Goodall was recognized to offer an amendment that would exempt landlords with ten or fewer units. He moved for the amendment adoption and the motion carried. Senator Dorsett moved for a favorable report and the motion did not carry. A copy of the PCS, the summary and the amendment is attached.

S.B. 687 – Exempt Plumb'g Contractor/Well Contractr Reqs.

Senator Foriest was recognized to explain the bill which exempts plumbing contractors from well contractor certification requirements. Senator Phil Berger moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 649 – Modify Speed Zone Restrictions.

Senator Goss was recognized to explain the bill which prevents speed limits in areas newly annexed by a municipality from automatically becoming thirty-five mile-per-hour speed zones, and allows flexibility in the location of work zone signage. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

S.B. 476 – Create Titling Categories-Replica/Street Rod.

Senator East was recognized to explain the bill. Senator Rucho moved to adopt the PCS for discussion and the motion carried. The PCS creates new motor vehicle titling and registration categories for motor vehicles classified as replica vehicles, street rods, modified vehicles, and custom-built vehicles, and makes corresponding changes. Mike Robertson, Division of Motor Vehicles Commissioner, was recognized to speak in favor of the bill and answer questions. Jim Lore, a car collector and restorer, was recognized to speak in opposition to the bill. Gordon McGilton, citizen, was recognized to speak in opposition to the bill. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 820 – Create New Titling Categories.

Senator Hartsell was recognized to explain the bill. Senator Rucho moved to adopt the PCS for discussion and the motion carried. The PCS creates new motor vehicle titling and registration categories for motor vehicles classified as replica vehicles, street rods, and custom vehicles, and makes corresponding changes.

The meeting adjourned at 1:38 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 12, 2009

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

FAVORABLE

S.B. **649** Modify Speed Zone Restrictions.
Sequential Referral: None
Recommended Referral: None

S.B. **687** Exempt Plumb'g Contractor/Well Contractr Reqs.
Sequential Referral: None
Recommended Referral: None

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

S.B. **476** Create Titling Categories-Replica/Street Rod.
Draft Number: 35330
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

S.B. **660** Auto Insurance/Diminution in Value.
Draft Number: 55393
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **811** Fuel Rationing Authority for Governor.
Draft Number: 55388
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **982** Small Business Assistance Fund.
Draft Number: 55394
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comments

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Teresa Johnson	NC Adult Day Services Assn
[illegible]	NMSS-NC
Dharmi Tailor	NMSS-NC
[illegible]	City of Wilmington
Henry Jones	Attorney Raleigh
Cam Cover	BPMPLC
Rep. Alice J. Underhill	NC House
Colleen Kochanek	AANC
John Porter	Apt. Assoc. of NC
Steve Brewer	EMBARQ
[illegible]	[illegible]

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Senate Commerce Committee — May 12, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Daniel Bain	K+L Gates
Leslie Bevacqua Conn	Copestrat
Amy McConkey	Smith Anderson
Lisa Martin	NC Home Builders
Jim Stewart	NC Chamber
Ted McMillan	NCADA
Leanne Winner	NCSBA
Linda Dunlap	NCAE
[illegible]	[illegible]

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Senate Commerce Committee
Name of Committee

May 12, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	AT+T North Carolina
Marty Bocock	EMBARQ
Fran Vallozzo	Dell Inc
Jack Cozart	Womble
Tammy C. Denning	NCDOT
Johanna Reese	DOT
Drew Ball	Sierra Club
Elizabeth Biser	DENR
Thomas Caves, Jr.	CCPS
Jane Mayer	NCLM
Colleen Kochek	TRPNC

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Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Lockhart Taylor	ESC
C. Brockett	ncsba
Meghan Jones	Disability Rights NC
Holly Stiles	" "
Lindsey Wakely	NCREC
TIM MCGILTON	PRIVATE CITIZEN
Chuck Grunewald	Pvt Citizen
GORDON MCGILTON	PRIVATE CITIZEN
[signature]	JDAL, PA
WES SCHROM	CORVETTE INTERNATIONAL
SHAWN GAITHER	CORVETTES INTERNATIONAL
DENNIS DEBORD	CORVETTES INTERNATIONAL

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Senate Commerce Committee — May 12, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Daniel Peterson	UNC School of Law Chapel Hill, NC
Joshua Bebacana Cann	Capstrat
Paul Stam	NCBA
Betty Turner	Bank of America
Kevin Leonard	WCSR
Paul Meyer	NCLM
Annaliese Dolph	DRNC
Michael Rulison	Environmental Consumers Alliance of the Triangle
Dave Hunt	SA
Dave Goodrich	DENR
Alicia Davis	MWC

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Senate Commerce Committee — May 12, 2009

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NAME	FIRM OR AGENCY AND ADDRESS
Robert Pasahal	Young Moore
Alexander Fotiadis	Citizen
Cathy Stuart	Stuart Law Firm
Caroline C. Valand	Lt. Gov Ofc
Bill Rowe	NC Justice Center
Bill Gaffney	Charlotte, Cemetery Bill
Robert Isidron, JR	Greensboro, NC Service Corp. Int.
Scott Mouw	NC DENR
Matt Ward	RVIA
Frank Gray	NCRLA
Amy McConkey	Smith Anderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	AIA NC
DAVE Simpson	CAGC
Debra DeCamillis	UNC. IOG
Gordon McAdoo	NC Conservation Network.
Chris Kukla	CNCC
Christopher Hamand	NCACC
Michelle Frazier	MF+S
Jim Lore	R. Jones Lore Atty CAGC
BOB & PATT RUTLEDGE	RUTTERS ROD SHOP.COM
Tommy Robinson	TWU
Mark Sutton	AFoT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Camera Henley	Electric Cities of NC
Daniel Baum	K&L GATES

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
ZACH PRITCHETT	CAA
Renee Roach	NC DOT
Michael DelasSantos	NC ACORN
Larry Hecknen	HSBC
Dirk Collin	My
Carmen Whaley	NC Credit Union League
Heather Barrett	Hunton & Williams
Tommy Fulkerson	AT&N
Tracy Kimbrell	Parker Poe
Lucy Edmondson	Public Staff NC Utilities Comm
Sterry Hutson	N.C. B.A.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 12, 2009

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Jorge Seddatte	PBV
Chuck Borman	Carolinas GCSA
Brian Parell	Carolinas GCSA
Chris Valenti	CGCSA II
R. Paul Wilms	WGR
Gregg Thomas	NFIB
Annette Newkirk	Office of the Governor
Rob Schofield	NC Policy Watch
DAVID BARNES	Poyner Spruill
James Baron	SCI
Thomas C. Caves, Jr	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 12, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joey Gardner	DMV License & Title
Mike Robertson	DMV
Johanna Reese	DOT
Butch Gunnells	NC Ber A
Walter Wells	AT&T
Bullwinkle J. Moose	Whottsamatta U
Boyd Cable	City of Charlotte
Jack Cozort	Womble
Dwight Eisenhower	Military - Industrial Complex
Fran Valluzzo	Dell Inc
Sam White	A.C.

Senate Commerce Committee
Tuesday, May 12, 2009, 11:00 AM
1027 LB

AGENDA

Introduction of Pages

Bills

SB 6	Beach Plan and Ins. Rate and Deductible Stay.	Sen. Boseman
SB 18	Amend Cemetery Act.	Sen. Goss
SB 476	Create Titling Categories-Replica/Street Rod.	Sen. East
SB 607	Disapprove Building Code Council Rule.	Sen. Dorsett
SB 649	Modify Speed Zone Restrictions.	Sen. Goss
SB 660	Auto Insurance/Diminution in Value.	Sen. Rucho
SB 687	Exempt Plumb'g Contractor/Well Contractr Reqs.	Sen. Foriest
SB 698	City/County Fee Increase on Internet.	Sen. Boseman
SB 795	Real Estate Disclosure/Military Installation.	Sen. Rand
SB 811	Fuel Rationing Authority for Governor.	Sen. McKissick
SB 820	Create New Titling Categories.	Sen. Hartsell
SB 887	Amend Electronics Recycling Law.	Sen. Vaughan
SB 889	Utilities/Carrier of Last Resort.	Sen. Vaughan
SB 893	Workers' Comp Self-Insurance Security Ass'n.	Sen. Hartsell
SB 913	Clarify Motor Vehicle Franchise Laws.	Sen. Hoyle
SB 914	Clarify MV Dealer Termination Assistance.	Sen. Hoyle
SB 916	Tenant Security Deposit/Interest-Bear. Acct.	Sen. Dorsett
SB 974	Consumer Economic Protection Act of 2009.	Sen. Rand
SB 982	Small Business Assistance Fund.	Sen. Jenkins

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 974
PROPOSED COMMITTEE SUBSTITUTE S974-CSRO-37 [v.1]

5/9/2009 6:05:11 PM

Short Title: Consumer Economic Protection Act of 2009. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CONSUMER ECONOMIC PROTECTION ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Consumer Economic Protection Act of 2009."

SECTION 2. G.S. 45-21.16 reads as rewritten:

"**§ 45-21.16. Notice and hearing.**

(a) The mortgagee or trustee granted a power of sale under a mortgage or deed of trust who seeks to exercise such power of sale shall file with the clerk of court a notice of hearing in accordance with the terms of this section. After the notice of hearing is filed, the notice of hearing shall be served upon each party entitled to notice under this section. The notice shall specify a time and place for the hearing before the clerk of court and shall be served not less than 10 days prior to the date of such hearing. The notice shall be served and proof of service shall be made in any manner provided by the Rules of Civil Procedure for service of summons, including service by registered mail or certified mail, return receipt requested. However, in those instances that publication would be authorized, service may be made by posting a notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of the hearing, and if service upon a party cannot be effected after a reasonable and diligent effort in a manner authorized above, notice to such party may be given by posting the notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of hearing. Service by posting may run concurrently with any other effort to effect service. The notice shall be posted by the sheriff. In the event that the service is obtained by posting, an affidavit shall be filed with the clerk of court showing the circumstances warranting the use of service by posting.

If any party is not served or is not timely served prior to the date of the hearing, the clerk shall order the hearing continued to a date and time certain, not less than 10 days from the date scheduled for the original hearing. All notices already timely served remain effective. The mortgagee or trustee shall satisfy the notice requirement of this section with respect to those parties not served or not timely served with respect to the original hearing. Any party timely served, who has not received actual notice of the date to which the hearing has been continued, shall be sent the order of continuance by first-class mail at his last known address.

(b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

(1) Any person to whom the security interest instrument itself directs notice to be sent in case of default.

(2) Any person obligated to repay the indebtedness against whom the holder thereof intends to assert liability therefor, and any such person not notified shall not be liable for any deficiency remaining after the sale.

(3) Every record owner of the real estate whose interest is of record in the county where the real property is located at the time the notice of hearing is filed in that county. The term "record owner" means any person owning a present or future interest in the real property, which interest is of record at the time that the notice of hearing is filed and would be affected by the foreclosure proceeding, but does not mean or include the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, judgment, mechanic's or materialman's lien, or other lien or security interest in the real property. Tenants in possession under unrecorded leases or rental agreements shall not be considered record owners.

(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

(1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.

(2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.

(3) The nature of the default claimed.

(4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.

(5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a detailed written statement of the amount of principal, interest, and any other fees, expenses, and disbursements that the holder in good faith is claiming to be due as of the date of the written statement, together with a daily interest charge based on the contract rate as of the date of the written statement. Nothing herein is intended to authorize any fees, charges, or methods of charging interest which is not otherwise permitted under contract between the parties and other applicable law.

(5b) To the knowledge of the holder, or the servicer acting on the holder's behalf, whether in the two years preceding the date of the statement any requests for information have been made by the borrower to the servicer pursuant to G.S. 45-93 and, if so, whether such requests have been complied with. If the time limits set forth in G.S. 45-93 for complying with any such requests for information have not yet expired as of the date of the notice, the notice shall so state. If the holder is not giving the notice, the holder shall confirm in writing to the person giving the notice the information required by this subsection to be stated in the notice.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain all of the following:

a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that the debtor's failure to attend the hearing will not affect the debtor's right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should the debtor elect to do so.

b. A statement that the trustee, or substitute trustee, is a neutral party and, while holding that position in the foreclosure proceeding, may not advocate for the secured creditor or for the debtor in the foreclosure proceeding.

c. A statement that the debtor has the right to apply to a judge of the superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties to the sale or resale become fixed, provided that the debtor complies with the requirements of G.S. 45-21.34.

d. A statement that the debtor has the right to appear at the hearing and contest the evidence that the clerk is to consider under G.S. 45-21.16(d), and that to authorize the foreclosure the clerk must find the existence of: (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to notice.

d1. A statement that, if the debtor owns and occupies the real property as his or her principal residence, the clerk may postpone the foreclosure hearing if there is a reasonable likelihood of resolving the delinquency without foreclosure.

d2. If the mortgagee or trustee has reason to believe that real estate security is occupied by the debtor as a principal residence, a statement briefly describing any efforts made to resolve the default or delinquency with the debtor before pursuing foreclosure and the results of any such efforts.

e. A statement that if the debtor fails to appear at the hearing, the trustee will ask the clerk for an order to sell the real property being foreclosed.

f. A statement that the debtor has the right to seek the advice of an attorney and that free legal services may be available to the debtor by contacting Legal Aid of North Carolina or other legal services organizations.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date.

(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under subdivisions (c)(5a) and (c)(5b) of this section and is not liable for inaccuracies in the written confirmation.

(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after November 15, 2008, where the underlying mortgage debt is a subprime loan as defined in G.S. 45-101(4), the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed.

(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. ~~If~~ Subject to G.S. 45-21.16C, if the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4), or if the loan is a subprime loan under G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d) **(Effective October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. ~~If~~ Subject to G.S. 45-21.16C, if the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b), then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as the clerk deems adequate to protect the opposing party from any probable loss by reason of

appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the appealing party owns and occupies the property to be sold as his or her principal residence, the clerk shall require a bond not to exceed the amount of the current scheduled monthly payment or periodic payments on the note or debt instrument; provided that the clerk may require a higher bond if there is substantial evidence of the likelihood of waste or damage to the property during the pendency of the appeal.

(e) In the event of an appeal, either party may demand that the matter be heard at the next succeeding term of the court to which the appeal is taken which convenes 10 or more days after the hearing before the clerk, and such hearing shall take precedence over the trial of other cases except cases of exceptions to homesteads and appeals in summary ejectment actions, provided the presiding judge may in his discretion postpone such hearing if the rights of the parties or the public in any other pending case require that such case be heard first. In those counties where no session of court is scheduled within 30 days from the date of hearing before the clerk, either party may petition any regular or special superior court judge resident in a district or assigned to hold courts in a district where any part of the real estate is located, or the chief district judge of a district where any part of the real estate is located, who shall be authorized to hear the appeal. A certified copy of any order entered as a result of the appeal shall be filed in all counties where the notice of hearing has been filed.

(f) Waiver of the right to notice and hearing provided herein shall not be permitted except as set forth herein. In any case in which the original principal amount of indebtedness secured was one hundred thousand dollars ($100,000), or more, any person entitled to notice and hearing may waive after default the right to notice and hearing by written instrument signed and duly acknowledged by such party. In all other cases, at any time subsequent to service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or trustee, shall mail to all other parties entitled to notice of such hearing a form by which such parties may waive their rights to the hearing. Upon the return of the forms to the clerk bearing the signatures of each such party and that of a witness to each such party's signature (which witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his discretion may dispense with the necessity of a hearing and proceed to issue the order authorizing sale as set forth above.

(g) Any notice, order, or other papers required by this Article to be filed in the office of the clerk of superior court shall be filed in the same manner as a special proceeding."

SECTION 3. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential property.**

(a) At the commencement of the hearing, the clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If it appears that the debtor does currently occupy the property as a principal residence, the clerk shall further inquire as to (i) what efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding, and (ii) what the results of any such efforts have been.

(b) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing the clerk may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an opportunity to resolve the foreclosure through forbearance, loan modification, or other commonly accepted resolution plan appropriate under the circumstances, (ii) whether the mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the debtor, including telephone conferences or in-person meetings with the debtor or other actual two-party communications, (iii) whether the debtor has indicated that he or she has the intent

and ability to resolve the delinquency by making future payments under a foreclosure resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain, not less than 30 days and not more than 120 days from the date scheduled for the original hearing."

SECTION 4. G.S. 58-70-15(b) reads as rewritten:

"(b) "Collection agency" includes:

(1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the listing; and

(2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or demand; and

(3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

(4) A 'debt buyer'. As used in this subdivision, the term 'debt buyer' means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans, consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

SECTION 5. G.S. 58-70-115 reads as rewritten:

"**§ 58-70-115. ~~Unconscionable means.~~ Unfair practices.**

No collection agency shall collect or attempt to collect any debt by use of any ~~unconscionable means.~~ Unfair practices. Such ~~means~~ practices include, but are not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver;

(2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge;

(3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.

(4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.

(5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (a) valid

documentation that the debt buyer is the owner of the specific debt instrument or account at issue, and (b) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subsection, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 45 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed."

SECTION 6. This act becomes effective October 1, 2009, and applies to notices issued and hearings conducted after that date.

SENATE BILL 974:
Consumer Economic Protection Act of 2009

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S974-CSRO-37		Committee Counsel

SUMMARY: ***Senate Bill 974 makes amendments to the law governing foreclosures under power of sale to require additional information in the notice and other protections for homeowners. The bill also amends the law regulating collection agencies to include debt buyers.***

[As introduced, this bill was identical to H930, as introduced by Reps. Ross, Hall, Martin, Blue, which is currently in House Judiciary I, if favorable, Finance.]

BILL ANALYSIS:

The PCS for Senate Bill 974 amends the law relating to foreclosure under power of sale by adding several items of information that must be provided to the debtor with the notice of hearing. The required information includes:

- A statement that if the debtor owns and occupies the property as a principal residence, the clerk may postpone the foreclosure hearing if there is a reasonable likelihood that the delinquency can be resolved without foreclosure.
- A statement describing any efforts made by the mortgagee or trustee to resolve the default or delinquency before pursuing foreclosure and the results of such efforts, if the mortgagee or trustee has reason to believe that the debtor owns and occupies the property as a principal residence.

The bill also limits the amount of the bond required to appeal from a finding of the clerk in a foreclosure proceeding involving an appeal made by a debtor who owns and occupies the property as a principal residence. The bond may not exceed the amount of the current scheduled monthly payment on the debt. The clerk may require a higher bond if there is substantial evidence of the likelihood of waste or damage to the property pending appeal.

Section 3 of the bill adds a new section directing the clerk at the beginning of the hearing on a foreclosure of owner-occupied residential property, to inquire as to what efforts have been made to resolve the matter voluntarily and the results of such efforts. The clerk can also continue the hearing for not less than 30 days or more than 120 days, if the clerk finds there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the matter.

Sections 4 and 5 amend the law regulating collection agencies. Under current law, no person, firm, corporation, or association can operate a collection agency without first obtaining a permit from the Commissioner of Insurance. Section 4 amends the definition of the term "Collection agency" to include debt buyers. A debt buyer is a person or entity that purchases delinquent or charged-off consumer loans, consumer credit accounts or other delinquent consumer debt and then aggressively pursues collection efforts.

Section 5 designates several activities conducted by collection agencies that are debt buyers as unfair practices, including:

- Attempting to collect on a debt when the collection agency knows or reasonably should know that the collection is barred by the statute of limitations.
- Attempting to collect on a debt without valid documentation that the debt buyer actually owns the debt and reasonable verification of the amount of the debt.
- Failing to give the debtor at least 45 days written notice before filing a legal action to collect the debt.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to notices issued and hearings conducted on or after that date.

S974-SMRO-88(CSRO-37) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 982*
PROPOSED COMMITTEE SUBSTITUTE S982-CSRC-25 [v.1]

5/11/2009 8:16:24 PM

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, 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, AND TO APPROPRIATE FUNDS.

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. 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 Committee 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 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 maybe e 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 note be used to enhance executive pay, provide bonuses, or consolidate operations in a manner that reduces the existing work force. 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 (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 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. There is appropriated from the General Fund three million dollars ($3,000,000) to the Department of Commerce for the implementation of this act.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/12/09

S. B. No. 982 - PCS Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Rand
Sen.)

1 moves to amend the bill on page 4, line 19 -20
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines;
4
5 and by renumbering the remaining sections
6 accordingly.
7
and on page 1 ~~by~~ lines 5-6
9 by deleting the words "PROVIDER, AND TO
10 APPROPRIATE FUNDS." and substituting the
11 words "PROVIDER."
12
13
14
15
16
17
18
19

SIGNED Lynda Farren

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/12/09

S. B. No. 982 - Proposed Comm. Sub. Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Jenkins
Sen.)

moves to amend the bill on page 2, line 11

( ) WHICH CHANGES THE TITLE

by deleting the word "section." and substituting the words "section apply."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
PROPOSED COMMITTEE SUBSTITUTE S18-CSSU-22 [v.3]

5/6/2009 12:04:25 AM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount. If the cemetery company posted a performance bond in lieu of any trust account required under G.S. 65-66(b) and G.S. 65-70(b) prior to October 1, 2009, then the Commission shall not approve any change of control until the applicant has provided sufficient evidence that the performance bond is being appropriately maintained and in an

amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or ~~that~~ cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to ~~G.S. 65-64(e)~~G.S. 65-64(e), which may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in accordance with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the

Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing

contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section, but may require that a casket be enclosed within a vault. A cemetery company may charge a reasonable fee not to exceed twenty dollars ($20.00) for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-66(g) is repealed.

SECTION 6. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year;~~ three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and

~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

SECTION 7. G.S. 65-70(f) is repealed.

SECTION 8.(a). There is created the Legislative Study Commission on the North Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

SECTION 8.(b). The Commission shall consist of 10 members as follows:

(1) Five members appointed by the Speaker of the House of Representatives.

(2) Five members appointed by the President Pro Tempore of the Senate.

SECTION 8.(c). The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

SECTION 8.(d). The Commission shall study the following issues relating to the North Carolina Cemetery Act:

(1) The membership of the Cemetery Commission.

(2) The powers and duties of the Cemetery Commission, including the Commission's authority to investigate and address consumer complaints.

(3) Qualifications of trustees for cemetery funds.

(4) Security of trust accounts maintained by cemetery companies.

(5) Adequacy of trust accounts cemetery companies are required to keep for sale of preneed merchandise and services and preconstruction and whether there should be any options in lieu of maintaining trust accounts.

(6) Protection for consumers who die before final payment is collected on a preneed contract.

(7) Any other matters the Commission deems appropriate.

SECTION 8.(e). The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120 19 and G.S. 120 19.1 through G.S. 120 19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The Senate's and the House of Representatives' Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120 32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 8.(f). The Commission shall report the results of its study and its recommendations to the 2010 Regular Session of the 2009 General Assembly upon its convening, and the Commission shall terminate upon the filing of its report.

SECTION 9. Sections 1 through 7 of this act become effective October 1, 2009. Sections 5 and 7 of this act apply to receipts from sales of personal property or services and receipts from sale of preconstruction crypts that occur on or after that date. The remainder of the act is effective when it becomes law.

SENATE BILL 18:
Amend Cemetery Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 12, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S18-CSSU-22		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Eliminate the option of posting a performance bond in lieu of making deposits to trust accounts for sale of preneed merchandise and preconstruction of mausoleums and belowground crypts, effective October 1, 2009.***
- ***Prohibit the Cemetery Commission from approving a change of control of a cemetery company until the applicant provides proof of sufficient merchandise and preconstruction trust accounts, or appropriate surety bonds in lieu of those accounts if the bonds were in place prior to October 1, 2009.***
- ***Provide that funds in a perpetual care trust account be invested by the trustee in the same manner as other fiduciaries according to the prudent person rule.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller.***
- ***Increase from 1 to 3 years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts.***
- ***Create a study commission to study additional issues related to the regulation of cemeteries under the North Carolina Cemetery Act.***

The PCS also makes several grammatical and technical changes, including updating references to statutes that have been recodified.

BILL ANALYSIS:

Posting bond in lieu of making deposits to trust accounts. Cemetery companies are required to establish trust accounts for proceeds from preneed contracts for property or services and proceeds from the sale of mausoleums and belowground crypts prior to construction. The accounts must be funded in an amount equal to 60% of proceeds received on contracts. However, current law allows companies to post an acceptable performance bond in lieu of making deposits to the trust accounts. The PCS would eliminate the option of posting bond in lieu of making deposits to those accounts. This would be effective October 1, 2009, and would apply to sales made after that date. Performance bonds posted prior to October 1, 2009 would remain in place until the merchandise/services covered are delivered.

Change of control/posting bond in lieu of making deposits to trust accounts. When a person acquires control of a cemetery company or otherwise acts to effectively change the control of a company, the person must apply to the Commission for approval of the change. The PCS would prohibit the Commission from approving the change of control until the applicant provides sufficient evidence that

appropriate merchandise and preconstruction trust accounts are being maintained, or that appropriate bonds have been obtained in lieu of those accounts if the bonds were in place prior to October 1, 2009.

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. The PCS would amend the law to require that the funds be invested and reinvested by the trustee in the same manner as other fiduciaries, according to the prudent person rule.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. The PCS would specify that the contract must include the cost for opening and closing each grave space.

Purchase of vaults. The PCS would prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault (an underground receptacle designed to encase and protect a casket) from the cemetery company or any other particular seller. The company would be able to require that a casket be enclosed within a vault and would be able to charge a reasonable fee, not to exceed $20, for delivery or inspection of a vault purchased from another seller.

Extension for completing construction of mausoleums. Currently, a cemetery company that sells preconstruction mausoleums or belowground crypts must begin construction within 48 months of the date of the first sale, and construction must be completed within 5 years after that date. An extension up to one year may be granted by the Commission for completion of construction for good cause. The PCS would allow the Commission to grant extensions up to three years.

Study issues related to regulation of cemeteries. The PCS would create the Legislative Study Commission on the North Carolina Cemetery Act to address remaining areas of concern with the current law regulating cemeteries.

EFFECTIVE DATE: The portions of the act amending the current law would become effective October 1, 2009, with the elimination of the bonding option applicable to receipts from sales of property or services and receipts from sale of preconstruction crypts that occur on or after that date. The study provision would be effective when it becomes law.

S18-SMSU-39(CSSU-22) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 6
PROPOSED COMMITTEE SUBSTITUTE S6-CSSU-42 [v.2]

5/11/2009 11:08:10 AM

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, 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.

SENATE BILL 6:
ABC Rules/Private Clubs

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S6-CSSU-42		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 6 amends 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.***

The PCS also changes the bill's short title.

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: Senate Bill 6 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.

S6-SMRG-42(CSSU-42) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 913
PROPOSED COMMITTEE SUBSTITUTE S913-CSSU-46 [v.1]

5/11/2009 11:24:38 PM

Short Title: Clarify Motor Vehicle Franchise Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-305(4) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, the relocation or addition of a different line-make franchise to the dealership facility, or the relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, addition, relocation, or other change ~~is unreasonable under the circumstances.~~ fails to meet the standards specified in this section. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed addition of a different line-make or relocation. The franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer,

sale, assignment, addition of a different line-make, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, addition of a different line-make, relocation, or change that is specifically referenced in this subdivision. An objection to a proposed transfer, sale, assignment, addition of a different line-make, relocation, or change in the executive management or principal operator of the dealership may only be premised upon the factual and legal bases specifically referenced in this subdivision. A manufacturer's notice of objection which is based upon factual or legal issues that are not specifically referenced in this subdivision as being issues upon which the Commissioner shall base his determination shall not be effective to preserve the franchisor's right to object to the proposed transfer sale, assignment, relocation, or change, provided the dealership or proposed transferee has submitted written notice, as required above, as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in the executive management or as principal operators, and the location and site plans of any proposed addition of a different line-make or relocation. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, addition of a different line-make, relocation, or change. If the franchisor requires additional information to complete its review, the franchisor shall notify the dealership within 15 days after receipt of the proposed transferee's name and address, financial ability, and qualifications, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed addition of a different line-make or relocation. If the franchisor fails to request additional information from the dealer or proposed transferee within 15 days of receipt of this initial information, the 30-day time period within which the franchisor may provide notice of objection shall be deemed to run from the initial receipt date. Otherwise, the 30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners

of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed addition or relocation of a different line-make franchise to the dealership facility, the only issues for determination by the Commissioner are whether the dealership's sales, service, and parts facilities would be sufficient to handle the reasonably expected demands of the multi-franchise dealership and whether the dealership possesses sufficient working capital and line of credit to handle the reasonably expected needs of the multi-franchise facility. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed relocation: provided, however, that

nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location.

...."

SECTION 2. G.S. 20-305(28) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line current model year new motor vehicles which are covered by the franchise ~~agreement.~~agreement, provided that such inventory representation requirements are not unreasonable under the circumstances.

...."

SECTION 3. G.S. 20-305(30) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the

effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2010.~~2014.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in

a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2010.~~2014.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

...."

SECTION 4. G.S. 20-305.1 is amended by adding a new subsection to read:

"(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to take or threaten to take any adverse action against a dealer located in this State, or to otherwise discriminate against any dealer located in this State, on the basis that the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party, unless the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle from the dealer. The conduct prohibited under this subsection includes, but is not limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of vehicles; or (iii) charging back or withholding payments or other compensation or consideration for which a dealer is otherwise eligible for warranty reimbursement or under a sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from participating in or discrimination against any dealer relating to any sales promotion, incentive program, or contest; or termination of a franchise. In any proceeding brought pursuant to this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the vehicle, did not know nor should have reasonably known that the customer intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled, registered, and, where applicable, taxes paid in any state or territory within the United States in the name of a customer who was physically present at the dealership at or prior to the time of sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle would be shipped to a foreign country."

SECTION 5. G.S. 20-305.1 is amended by adding a new subsection to read:

"(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to a motor vehicle manufacturer shall also apply to a component parts manufacturer. For purposes of this section, a component parts manufacturer means a person, resident, or nonresident of this State, who manufactures or assembles new motor vehicle "component parts" and directly warrants the component parts to the consumer. For purposes of this section, component parts means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer of the motor vehicle."

SECTION 6. This act is effective when it becomes law.

SECTION 7. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 914
PROPOSED COMMITTEE SUBSTITUTE S914-CSSU-47 [v.1]

5/12/2009 12:11:21 AM

Short Title: Clarify MV Dealer Termination Assistance. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DEALER TERMINATION ASSISTANCE RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision

in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this paragraph, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. –

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint

venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments.

1. Notwithstanding the terms of any franchise, agreement, or waiver, upon ~~Upon~~ the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, ~~pursuant to this section,~~ the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer ~~shall be allowed fair and reasonable compensation by the manufacturer~~ for ~~the~~ all of the following:

I. ~~New~~ Each new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired ~~from the manufacturer~~ within 24 months of the effective date of the termination ~~18 months, at a price not to exceed the original manufacturer's price to the dealer, and~~ from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or ~~damaged,~~damaged to the prejudice of the manufacturer or distributor while in the new motor

vehicle dealer's possession, and which has not been driven more than ~~200~~ 1,000 miles, and for which no certificate of title has been ~~issued;~~issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership.

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at ~~a price not to exceed the original manufacturer's price to the dealer~~ the current catalogue price, less any applicable discounts, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable ~~condition;~~condition.

III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved ~~sources; and~~ sources.

IV. Special tools that have not been substantially altered or ~~damaged~~ damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.

2. ~~Fair and reasonable compensation for the~~ The compensation provided above shall be paid by the manufacturer or distributor ~~within~~ not later than 90 days ~~of the effective date of termination, cancellation or nonrenewal,~~ after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying

the elements of compensation requested by the dealer; provided the new motor vehicle dealer ~~has~~ has, or can obtain, clear title to the inventory and has ~~conveyed~~ conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the ~~manufacturer's~~ repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor ~~not~~ charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in ~~G.S. 20-305(6)c.1.IV.~~,G.S. 20-305(6)c.1.IV. or G.S. 20-305(6)f., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due ~~within~~ not later than 90 days ~~of the effective date of the termination, cancellation, or nonrenewal~~ after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal.

In the event of the occurrence of any of the events specified in G.S. 20-305(6)d.1. above: ~~termination, cancellation or nonrenewal by the manufacturer or distributor under this section,~~ except termination, cancellation or nonrenewal for ~~insolvency,~~ license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner :

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.

3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this paragraph e., the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.

4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service

operations from this location during the same three-year period.

5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer or distributor within 90 days ~~of the effective date of termination, cancellation, or nonrenewal.~~ after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer.

f. ~~The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.~~

The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership.

~~Notwithstanding the terms of any contract or agreement, any dealer's termination or resignation shall not be deemed to be voluntary if that termination or resignation occurred under the manufacturer's threat of nonrenewal, cancellation, or termination of the franchise.~~

The provisions of sub-subdivisions d. and e. of this subdivision shall also apply, upon request of the dealer pursuant to G.S. 20-305(6)d.2., when a manufacturer or distributor provides public notice or notifies one of its franchised dealers located in this State that it intends to either phase out the dealer's franchise or terminate the dealer's franchise at a later date, or when a manufacturer or distributor provides public notice or notice to any of its franchised or licensed dealers located in this State that any of the occurrences set forth in G.S. 20-305(6)c.1.IV. has occurred or will occur in the future, so as to either render a dealer's franchised business substantially unmarketable, or saleable only at prices significantly below its fair market value prior to the date of the occurrences set forth in G.S. 20-305(6)c.1.IV.

g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

...."

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 893
PROPOSED COMMITTEE SUBSTITUTE S893-CSRG-24 [v.1]

5/10/2009 1:37:20 PM

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%) 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 ~~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), 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.

SENATE BILL 893:
Workers' Comp Self-Insurance Security Ass'n

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 10, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S893-CSRG-24		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 893 makes several changes to the law governing the NC Self-Insurance Guaranty Association.

BACKGROUND: The North Carolina Self-Insurance Guaranty Association is a "nonprofit, unincorporated legal entity which provides for the payment of covered claims [under the Workers' Compensation Act] against member, self-insurers...to avoid financial loss 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" was "established by the Association whereby self-insurers 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 authorizes 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 makes 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 adds 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 Association Aggregate Security 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 25% of the self-insurer's outstanding claims, but not less than $500,000, or such **greater** amount as the Commissioner prescribes.

Section 4 increases the minimum, deposit amount from 25% to 50% of total undiscounted, outstanding claims when no Association Aggregate Security System is in effect for individual self insurers who do not have a BBB debt rating or better.

EFFECTIVE DATE: Senate Bill 893 becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 811
PROPOSED COMMITTEE SUBSTITUTE S811-CSMD-5 [v.3]

5/11/2009 8:18:10 PM

Short Title: Fuel Rationing Authority for Governor. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GOVERNOR TO IMPOSE FUEL RATIONING MEASURES DURING A STATE OF DISASTER, A LOCAL STATE OF EMERGENCY, OR AN ABNORMAL MARKET DISRUPTION.

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. Fuel rationing authority.**

(a) In addition to any other powers conferred on the Governor by law, during a triggering event, the Governor shall have the power to establish a system of rationing or other controls over fuel. These measures may extend to all parties in the chain of distribution, including a supplier, wholesaler, distributor, or retail seller of fuel. This authority shall include the power to administer and enforce a similar federal order or regulation.

(b) As used in this section, the term 'triggering event' means any of the following:

(1) The declaration of a state of emergency pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes.

(2) The proclamation of a state of disaster pursuant to G.S. 166A-6.

(3) The finding of an abnormal market disruption, as that term is defined in G.S. 75-38(e), with respect to fuel."

SECTION 2. G.S. 166A-6(c) reads as rewritten:

"(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

...

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, ~~fuel,~~ rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation; and to establish a system of price freezing over fuel.

...."

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

SENATE BILL 811:
Fuel Rationing Authority for Governor

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Steven Rose
Analysis of:	PCS to First Edition S811-CSMD-5		Committee Counsel

SUMMARY: ***The PCS for SB 811 confers fuel rationing authority on the Governor in the event of a state of emergency. The power to freeze fuel prices remains with the Governor and Council of State acting concurrently.***

CURRENT LAW: Article I of Chapter 166A is the Emergency Management Act. During a declared state of disaster the Governor, with the concurrence of the Council of State, has certain powers, including the power to establish economic controls over various resources, materials and services, including fuel. This power includes rationing and price freezing.

BILL ANALYSIS: SB 811 gives the Governor alone the power to establish a system of rationing or other controls over fuel, extending to all parties in the distribution chain. This includes the power to enforce and administer similar federal orders or regulations. This power is triggered by a declared state of emergency, proclamation of a state of disaster, or an abnormal market disruption with respect to fuel.

The power to freeze fuel prices must still be exercised by the Governor *with* the concurrence of the Council of State.

EFFECTIVE DATE: Effective when it becomes law.

S811-SMRL-64(CSMD-5) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 660
PROPOSED COMMITTEE SUBSTITUTE S660-CSRG-14 [v.2]

4/29/2009 6:10:25 PM

Short Title: Auto Insurance/Diminution in Value. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF DETERMINING PROPERTY DAMAGES AS A PART OF MOTOR VEHICLE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 is amended by adding a new subsection to read:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

...

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For a claim for property damage to a motor vehicle against an insurer, the policy shall provide that if:

(1) The claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and

(2) The difference in the claimant's and the insurer's estimate of fair market value is greater than twenty-five hundred dollars ($2500.00),

then, on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered select the umpire. The appraisers shall then submit their differences to the umpire. The umpire shall then prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers, or the report of the umpire, when filed with the insurer and the claimant shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by

the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a motor damage appraiser licensed by the Department of Insurance.

...."

SECTION 2. G.S. 7A-292 is amended by adding a new subdivision to read:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

...

(15) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1)."

SECTION 3. This act becomes effective January 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

SENATE BILL 660:
Auto Insurance/Diminution in Value

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	April 29, 2009
Introduced by:	Sen. Rucho	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S660-CSRG-14		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 660 amends G.S. 20-279.21 by adding a new subsection to provide a procedure for determining the amount of damage to a motor vehicle resulting from the difference in fair market value of the vehicle immediately before and immediately after an accident. This subsection only applies when liability for coverage is not in dispute and only if the difference in the claimant's and the insurer's estimate of fair market is greater than $2500.00.***

This procedure would typically be used for third party claims by a driver who was not at fault against the insurer of a driver who was liable for damages resulting from an accident.

[As introduced, this bill was identical to H893, as introduced by Reps. Justice, Grady, which is currently in House Judiciary III, if favorable, Insurance.]

CURRENT LAW: 11 NCAC 4.0421 provides that "if a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle."

BILL ANALYSIS: Section 1 of the bill amends G.S. 20-279.21, *"Motor vehicle liability policy" defined*, to provide an alternative method for determining motor vehicle property damage when coverage for the claim is not in dispute.

Specifically, the bill provides that (1) if the parties fail to agree as to the difference in fair market value of the vehicle immediately before and immediately after the accident and (2) if the difference in the parties' estimates of fair market value is greater than $2500.00, then on the written demand of the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other party of the appraiser within 20 days of the written demand. The appraisers may then appraise the loss. If the appraisers fail to agree, the appraisers shall select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree on an umpire within 15 days, the claimant or the insurer may request a magistrate in the county where the vehicle is registered to select the umpire. The appraisers must then submit their differences to the umpire and the umpire shall file a report determining the amount of the loss. The umpire may not award damages that are higher or lower than the determinations of the appraisers. The umpire may not make a determination as to the liability or the existence of coverage.

Either party has 15 days to reject the report. If the report is not rejected, it shall be binding upon the parties.

Each appraiser shall be paid by the party selecting the appraiser. The expenses of appraisal and the umpire shall be paid equally by the parties.

Section 2 gives a magistrate the power to appoint an umpire as provided in Section 1 of the Proposed Committee Substitute.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 660 becomes effective January 1, 2010 and applies to policies issued or renewed on or after that date.

BACKGROUND: G.S. 20-71.4(a) provides that it is Class 2 misdemeanor to "transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle."

S660-SMRG-25(CSRG-14) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 607
PROPOSED COMMITTEE SUBSTITUTE S607-CSRO-39 [v.1]

5/11/2009 10:52:08 AM

Short Title: Direct Building Code Council to Amend Rule. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE NORTH CAROLINA BUILDING CODE COUNCIL TO ADOPT ADDITIONAL AMENDMENTS TO CONFORM THE ACCESSIBILITY PROVISIONS OF THE INTERNATIONAL BUILDING CODE TO THE NORTH CAROLINA ACCESSIBILITY CODE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 11 of the 2006 International Building Code, with 2009 NC Amendments, and the referenced ANSI A117.1 Standard, as adopted by the North Carolina Building Code Council on March 11, 2008, and approved by the Rules Review Commission on May 15, 2008, 22 N.C. Reg. 2212 (June 2, 2008), becomes effective when this act becomes law.

SECTION 2. The North Carolina Building Code Council shall ensure that accessibility rules are equal to or more stringent than federal accessibility guidelines. The Council shall adopt additional amendments to Chapter 11 of the International Building Code to maintain accessibility standards in the following specific area:

(a) Type A units. The Council shall not reduce the required number of accessible Type A units in multifamily dwellings below 5%.

(b) Work areas. Areas that are used only as work areas shall be designed and constructed so that persons with disabilities can approach, enter and exit the areas.

(c) Toilets and bathing facilities. Toilet and bathing facilities shall be designed and constructed so that accessibility is maintained in public areas and in toilet rooms or bathing facilities accessed only through a private office, including a minimum of one fixture of each type provided in each toilet room shall be accessible.

(d) Elevators. Elevators in transportation facilities shall be equipped with transparent panels or glazing which provide an unobstructed view into and out of the car.

SECTION 3. Rules adopted pursuant to this act are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this act shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 4. Nothing in this act shall be construed to limit, expand or modify the authority of the Building Code Council with regard to regulatory actions otherwise authorized by State or federal law.

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

SENATE BILL 607:
Direct Building Code Council to Amend Rule.

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S607-CSRO-39		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 607 allows rules adopted by the Building Code Council to become effective and directs the Council to adopt additional rules to conform the accessibility provisions of the International Building Code to the North Carolina Accessibility Code.***

CURRENT LAW: The Building Code Council is authorized to adopt a State Building Code in accordance with G.S. 143-138. However, the law provides that the State Building Code is a rule as defined by the Administrative Procedure Act (APA) and must be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B, with some limited exceptions.

Under the APA, once an agency adopts a rule the rule must be approved by the Rules Review Commission (RRC) based on specific statutory criteria. If the RRC approves the rule and receives 10 letters requesting legislative review, the rule cannot go into effect until at least the 31st day of the next legislative session. During the first 30 legislative days, any member of the General Assembly can introduce a bill to disapprove the rule, which further delays its effective date until final action is taken on the bill or the Legislature adjourns.

In March 2008, the Building Code Council adopted rules amending the 2006 International Building Code with 2009 NC amendments to include the NC Accessibility Code. In May 2008, the RRC approved the rules and simultaneously received at least 10 letters requesting legislative review. The effective date of the rules has been delayed since 2008, to allow the Legislature to review the rules.

BILL ANALYSIS:

Section 1 of the bill allows the rules adopted in 2008 to become effective when this act becomes law. **Section 2** directs the Building Code Council to adopt additional amendments to ensure that accessibility rules are equal to or more stringent than federal accessibility guidelines. The bill requires amendments to the Code to maintain accessibility standard in the following areas:

- Type A units in multifamily dwellings.
- Work areas.
- Toilets and bathing facilities.
- Elevators.

Section 3 provides that the rules adopted as directed by this act do not have to be reviewed again by the RRC, but will be treated as though 10 letters were received. The rules will not go into effect until at least the 30th legislative day of the 2010 Regular Session.

Section 4 clarifies that nothing in the act changes the authority of the Building Code Council with regard to otherwise authorized regulatory action.

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

S607-SMRO-87(CSRO-39) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 916
PROPOSED COMMITTEE SUBSTITUTE S916-CSRO-38 [v.1]

5/9/2009 6:14:45 PM

Short Title: Tenant Security Deposit/Interest-Bear. Acct. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT LANDLORDS SHALL DEPOSIT ALL TENANT SECURITY DEPOSITS IN AN INTEREST-BEARING TRUST ACCOUNT AND THE INTEREST SHALL BE REMITTED TO THE NORTH CAROLINA HOUSING TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-50 reads as rewritten:

"**§ 42-50. Deposits from the tenant.**

Security deposits from the tenant in residential dwelling units shall be deposited in ~~a~~ an interest-bearing trust account with a licensed and insured bank or savings institution located in the State of ~~North Carolina or the landlord may, at his option, furnish a bond from an insurance company licensed to do business in~~ North Carolina. ~~The security deposits from the tenant may be held in a trust account outside of the State of North Carolina only if the landlord provides the tenant with an adequate bond in the amount of said deposits.~~ The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where ~~his~~ the tenant's deposit is currently ~~located or the name of the insurance company providing the bond.~~ located."

SECTION 2. G.S. 42-52 reads as rewritten:

"**§ 42-52. Landlord's obligations.**

(a) The landlord shall direct the bank in which the tenant security deposit is located to do all of the following:

(1) Remit interest or dividends, less any deductions for bank service charges, fees, and taxes collected with respect to the deposited funds, at least quarterly to the North Carolina Housing Trust Fund at the North Carolina Housing Finance Agency. If the bank does not waive service charges or fees on tenant security deposit trust accounts, reasonable customary account maintenance fees may be assessed but only against accrued interest and funds belonging to the landlord maintaining the account. Fees for wire service, insufficient funds, bad checks, stop payment orders, account reconciliation, negative collected balances, and check printing are business costs or costs billable to others and may not be charged against the interest earned by a tenant security deposit trust account.

(2) Transmit with each remittance to the North Carolina Housing Trust Fund at the North Carolina Housing Finance Agency a statement showing the name of the landlord maintaining the account with respect to which the remittance

is sent, the earnings period, and the rate of interest applied in computing the remittance.

(3) Transmit to the landlord maintaining the account at the same time action is taken as provided in subdivision (2) of this subsection a report showing the amount remitted to the North Carolina Housing Trust Fund at the North Carolina Housing Finance Agency, the earnings period, and the rate of interest applied in computing the remittance.

(b) Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession by the tenant. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold as damages part of the security deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages.

(c) Any agreement between a landlord and a tenant that seeks to avoid the rights, obligations, and remedies created by this Article is void as contrary to public policy."

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 916:
Tenant Security Deposit/Interest-Bear. Acct

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Karen Cochrane-Brown Committee Co-Counsel
Analysis of:	PCS to First Edition S916-CSRO-38		

SUMMARY: ***Senate Bill 916 provides that a landlord must deposit all tenant security deposits in an interest-bearing trust account and that the accruing interest shall be paid to the North Carolina Housing Trust Fund.***

The PCS makes technical corrections.

CURRENT LAW:

G.S. 42-50 currently provides that a landlord may chose to deposit tenant security deposits in a trust account in a bank located in North Carolina or furnish a bond from a licensed insurance company. The security deposits may be kept in a bank outside of North Carolina if the landlord provides an adequate bond in the amount of the deposits. The landlord is required to notify the tenant within 30 days of the beginning of the lease term of the name and address of the bank or the name of the insurance company.

No later than 30 days after the termination of the tenancy, if none of the permitted uses for the deposit have occurred, the landlord must refund the money with a written itemization for any deductions to the tenant.

BILL ANALYSIS:

Senate Bill 916 requires that the landlord deposit tenant security deposits in an interest-bearing trust account in a North Carolina bank. It also eliminates the landlord's option to furnish a bond in lieu of the trust account.

The bill provides that the landlord must direct the bank holding the security deposit to remit the interest or dividends, minus any fees, charges and taxes, to the North Carolina Housing Trust Fund in the North Carolina Housing Finance Agency at least quarterly. Reasonable account maintenance fees may be assessed against funds belonging to the landlord. In addition, other bank service fees may not be charged against the interest earned by a security deposit trust account.

With each remittance to the Housing Trust Fund, the bank must send a statement showing the name of the landlord, the earning period, and the interest rate applied to the account. At the same time, the bank must also notify the landlord of the amount remitted to the Housing Trust Fund, the earning period, and the interest rate.

The bill further provides that any agreement between a landlord and tenant that seeks to avoid the rights, obligations and remedies under this law is void as contrary to public policy.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____ DATE 5-12-09

S. B. No. 916 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ (S916-CSRO-38)

Rep.)
Sen.) Goodall

1 moves to amend the bill on page 1, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by adding the following at the end of the line:
4
5 "The requirement to maintain deposit security deposits
6 in an interest-bearing trust account shall not
7 apply to landlords with no more than 10
8 rental units."
9
10 and on page 2, line 28, by inserting the
11 following between the lines:
12
13 "The requirements of this subsection shall not
14 apply to landlords with no more than 10 rental
15 units."
16
17
18
19

SIGNED W E Goodall

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

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.

SENATE BILL 687: Exempt Plumb'g Contractor/Well Contractr Reqs

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Karen Cochrane-Brown Committee Co-Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 687 would exempt plumbing contractors from well contractor certification requirements when performing certain well contractor activities.***

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 bill would exempt a licensed plumbing contractor who installs, breaks, or reinstalls a well seal, or sanitizes 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.

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

S687-SMRO-86(e1) v1

SENATE BILL 649

Short Title:	Modify Speed Zone Restrictions.	(Public)
Sponsors:	Senator Goss.	
Referred to:	Commerce.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PREVENT SPEED LIMITS IN AREAS NEWLY ANNEXED BY A MUNICIPALITY FROM AUTOMATICALLY BECOMING THIRTY-FIVE MILE-PER-HOUR SPEED ZONES AND TO ALLOW FLEXIBILITY IN THE LOCATION OF WORK ZONE SIGNAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141(f) reads as rewritten:

"(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

When local authorities annex a road on the State highway system, the speed limit posted on the road at the time the road was annexed shall remain in effect until both the Department and municipality pass concurrent ordinances to change the speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality."

SECTION 2. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under this section shall be required to pay a penalty of two hundred fifty dollars ($250.00). This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted ~~at the beginning of the~~ in the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the

Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the work zone. Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

SECTION 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 649:
Modify Speed Zone Restrictions

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 649 is an agency bill that would prevent the automatic lowering of the speed limit for roads in areas newly annexed by a city, and allow flexibility in the location of work zone signage.

[As introduced, this bill was identical to H1096, as introduced by Rep. Martin, which is currently in House Transportation, if favorable, Judiciary I.]

CURRENT LAW: G.S. 20-141 provides that the speed limit for roads inside the municipal corporate limits is thirty-five miles per hour for all vehicles. If a local government determines that a higher maximum speed limit is reasonable and safe, the government may raise the speed limit. A speed limit raised in this manner does not become effective until the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the new speed limit. When a road is encompassed by a municipal annexation, the speed limit for that road automatically becomes thirty-five miles per hour.

G.S. 20-141 provides an additional penalty of $250 is imposed on drivers speeding in a highway work zone. The additional penalty only applies if there is a sign posted at beginning of the work zone stating the penalty for speeding in the work zone. The highway work zone is defined as the area between the first sign that informs motorists of the zone, and the last sign that informs motorists of the end of that work zone.

BILL ANALYSIS: Section 1 of Senate Bill 649 would provide that the speed limit for roads that are annexed into the municipal corporate limits does not automatically drop to thirty-five miles per hour upon annexation. If a road is annexed, the existing speed limit remains in effect until the Department and the municipality pass concurrent ordinances to change the speed limit.

Section 2 of Senate Bill 649 would provide that the additional penalty for speeding in a highway work zone would apply if there is a sign posted anywhere in the highway work zone stating the penalty for speeding in the work zone.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law. Section 2 of this act is effective on December 1, 2009 and applies to offenses committed on or after that date.

S649-SMTD-59(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 476
PROPOSED COMMITTEE SUBSTITUTE S476-CSSU-28 [v.1]

4/27/2009 8:36:42 PM

Short Title: Create Titling Categories-Replica/Street Rod. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE NEW MOTOR VEHICLE TITLING AND REGISTRATION CATEGORIES FOR MOTOR VEHICLES CLASSIFIED AS REPLICA VEHICLES, STREET RODS, MODIFIED VEHICLES, AND CUSTOM-BUILT VEHICLES, AND TO MAKE CORRESPONDING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(15a) Inoperable Vehicle. – A motor vehicle that is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area."

SECTION 2. G.S. 20-4.01(33) reads as rewritten:

"(33) a. Flood Vehicle. – A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. – A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. – A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential ~~parts; and includes glider kits and custom assembled vehicles.~~parts and includes glider kits.

d. Salvage Motor Vehicle. – Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. – A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. – A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered."

SECTION 3. G.S. 20-4.01(43) reads as rewritten:

"(43) Specially Constructed Vehicles. – ~~Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.~~ Motor vehicles required to be registered under this Chapter and that fit within one of the following categories. For purposes of this subdivision, 'materially altered' means (i) the removal, addition, or substitution of new or used essential parts or (ii) the modification of any essential part from its original configuration or design as originally produced by the manufacturer; and 'essential parts' means the vehicle's frame rail, body, and chassis, or any component part of the frame rail, body, or chassis.

a. Replica vehicle. – A vehicle, excluding motorcycles, originally sold unassembled and manufactured from a kit, which when assembled replicates an earlier year, make, and model vehicle.

b. Street rod vehicle. – A vehicle, excluding motorcycles, manufactured prior to 1949, which has been materially altered or has a body constructed from nonoriginal materials.

c. Modified vehicle. – A vehicle, excluding motorcycles, manufactured on or after 1949 which has been materially altered or has a body constructed from nonoriginal materials.

d. Custom-built vehicle. – A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts, which has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes motorcycles which were originally sold unassembled and manufactured from a kit or which have been materially altered or has a body constructed from nonoriginal materials."

SECTION 4. Part 1 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-49.3. Annual inspection training of Division agents.**

Every agent of the Division of Motor Vehicles, License and Theft Bureau, shall attend an annual in-service training course that incorporates a classroom training program detailing the inspection procedure for inoperable vehicles and complete a physical examination of a test vehicle to verify that the agent can determine which vehicles are operable or inoperable based on the uniform training required by this section to ensure uniform statewide enforcement of the titling provisions of this Part."

SECTION 5. G.S. 20-53 reads as rewritten:

"**§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**

(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the

Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2

(e) No title shall be issued to an initial applicant for (i) a foreign vehicle that is 35 model years or older or (ii) a specially constructed vehicle prior to the completion of a vehicle examination conducted by the License and Theft Bureau of the Division of Motor Vehicles. However, upon such application and the submission of any required documentation, the Division shall be authorized to register the vehicle pending the completion of the examination of the vehicle. Such registration shall be valid for one year but shall not be renewed unless and until the vehicle examination has been completed."

SECTION 6. Part 3 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-53.1. Specially constructed and inoperable vehicle titles.**

(a) Specially constructed vehicles shall be titled in the following manner:

(1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of 'Replica' shall be applied to the title and registration card. All replica vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of 'Street Rod' applied to the title and registration card. All street rod vehicle titles will be branded as 'Specially Constructed Vehicle.'

(3) The model year of a modified vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with the label of 'Modified' applied to the title and registration card. All modified vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(4) Custom-built vehicles shall be titled and registered showing the make as 'Custom-built,' and the year the vehicle was built shall be the vehicle model year. All custom-built vehicle titles shall be branded as 'Specially Constructed Vehicle.'

(b) Inoperable vehicles may be titled, but no registration may be issued until such time as the License and Theft Bureau inspects the vehicle to ensure it is mechanically fit for operation on a public street, highway, or public vehicular area. Once a vehicle has been deemed safe and operable pursuant to an inspection by the License and Theft Bureau, the Commissioner shall title the vehicle by classifying it in the proper category and collecting all highway use taxes applicable to the value of the car at the time the vehicle is retitled to a proper classification described in this section.

(c) Motor vehicle certificates of title and registration cards issued pursuant to this section shall be branded in accordance with this section. As used in this section, 'branded' means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Specially constructed vehicle.

(2) Inoperable vehicle."

SECTION 7. Part 3 of Article 3 of Chapter 20 of the General Statues is amended by adding a new section to read:

"**§ 20-53.2. Failure to disclose status of specially constructed or inoperable vehicles shall be a misdemeanor.**

It shall be unlawful for any transferor of a motor vehicle to transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a specially constructed vehicle or

inoperable vehicle without disclosing that fact in writing to the transferee prior to the transfer of the vehicle."

SECTION 8. Part 3 of Article 3 of Chapter 20 of the General Statues is amended by adding a new section to read:

"**§ 20-53.3. Appeal of specially constructed vehicle classification determination to Vehicle Classification Review Committee.**

(a) Any person aggrieved by the Division's determination of the appropriate vehicle classification for a specially constructed vehicle may request review of that determination by the Vehicle Classification Review Committee. This review shall be initiated by completing a Vehicle Classification Review Request and returning the request to the Division. Such Vehicle Classification Review Request shall be made on a form provided by the Division. The decision of the Review Committee may be appealed to the Commissioner of Motor Vehicles. The decision of the Commissioner is final, and no further appeal is authorized.

(b) The Vehicle Classification Review Committee shall consist of five members. Three members shall be personnel of the License and Theft Bureau of the Division of Motor Vehicles and shall be designated by the Commissioner. Two members shall be members of the public and shall be appointed by the Commissioner. Any member of the public so appointed shall serve at the pleasure of the Commissioner."

SECTION 9. G.S. 20-71.3(b) reads as rewritten:

"**§ 20-71.3. Salvage and other vehicles – titles and registration cards to be branded.**

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the ~~Enforcement Section~~ License and Theft Bureau of the Division. For purposes of this section, the term "six model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle."

SECTION 10. G.S. 105-187.3(b) reads as rewritten:

"**§ 105-187.3. Rate of tax.**

(b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to ~~be~~ be:

(1) For replica or custom-built vehicles, the value of all parts, materials, and labor, including the labor of a subcontractor, used to construct the vehicle.

(2) For all other vehicles, the value of the vehicle set in a schedule of values adopted by the Commissioner."

SECTION 11. G.S. 105-187.6(a) is amended by adding a new subdivision to read:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

...

(10) To an inoperable vehicle as defined in G.S. 20-4.01."

SECTION 12. This act becomes effective October 1, 2009, and applies to applications received by the Division of Motor Vehicles on or after that date.

SENATE BILL 476:
Create Titling Categories-Replica/Street Rod

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 28, 2009
Introduced by:	Sen. East	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S476-CSSU-28		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 476 would:

- ***Create a new definition for "inoperable vehicle".***
- ***Amend the definition of "reconstructed vehicle" to exclude custom assembled vehicles.***
- ***Redefine "specially constructed vehicles" as replica, street rod, modified, and custom vehicles.***
- ***Require that every DMV agent in the Bureau of License and Theft be trained to inspect vehicles to determine if they are operable or inoperable and prohibit the DMV from issuing a title for a specially constructed vehicle prior to inspection.***
- ***Require branding of title and registration for "specially constructed vehicles" and "inoperable vehicles", and labeling of title and registration as "Replica", "Street Rod", "Modified", and "Custom-built", as appropriate.***
- ***Make it a Class 2 misdemeanor to transfer a specially constructed vehicle or inoperable vehicle without disclosing that fact in writing.***
- ***Create an appeals process for vehicle classification decisions.***
- ***Provide that the presumed market value of replica and custom built vehicles for tax purposes shall be the value of their parts and materials plus the labor necessary to assemble them.***
- ***Exempt inoperable vehicles from the highway use tax.***

CURRENT LAW: Any vehicle intended to be operated on the highway must be registered with the Division of Motor Vehicles, and the owner must apply to the Division for a certificate of title, registration plate, and registration card. The Division is required to refuse registration of any vehicle that is unfit or unsafe to be operated on the highway.

Under current law, a "specially constructed vehicle" is defined as one that is not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer and is *not materially altered* from original construction. A "reconstructed vehicle" is defined as one that *has been materially altered* from original construction due to removal, addition or substitution of parts, and includes custom assembled vehicles. A reconstructed vehicle must have a certificate of title and registration card that is branded as such, and it is a Class 2 misdemeanor to transfer a reconstructed vehicle without disclosing that fact in writing.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 476 would do the following:

"Inoperable Vehicle". The PCS would define "Inoperable Vehicle" as a motor vehicle that is unfit or unsafe to be operated or moved upon a highway.

Amend definition of "Reconstructed Vehicle". The PCS would take custom assembled vehicles out of the definition of "Reconstructed Vehicle".

Redefine "specially constructed vehicles". The PCS would delete the current definition, which includes that the vehicle not be materially altered from original construction. The new definition would include vehicles in the following categories:

- Replica – a vehicle, excluding motorcycles, sold unassembled, manufactured from a kit, and when assembled replicates an earlier year, make, and model vehicle.
- Street rod – a vehicle, excluding motorcycles, manufactured before 1949, which has been materially altered or with a body constructed from nonoriginal materials.
- Modified – a vehicle, excluding motorcycles, manufactured on or after 1949, which has been materially altered or with a body constructed from nonoriginal materials.
- Custom-built – a vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts with an exterior that does not replicate or resemble any other manufactured vehicle. Also includes motorcycles that would otherwise fall into the other categories.

Inspection of vehicles by Division agents. The PCS would require all agents of the DMV License and Theft Bureau to receive training on inspecting and identifying operable and inoperable vehicles. It would also prohibit the Division from issuing a title for a specially constructed vehicle prior to completing an inspection to determine if the vehicle is operable. The Division would be able to register the vehicle for up to one year pending completion of the inspection.

Title and registration of specially constructed and inoperable vehicles. The PCS would provide that specially constructed and inoperable vehicles be titled as follows:

- Replica
  - Titled as year, make, and model of vehicle replicated
  - Title and registration labeled "Replica"
  - Title branded "Specially Constructed Vehicle"
- Street Rod
  - Titled as manufacturer's assigned model year, with manufacturer's name as make
  - Title and registration labeled "Street Rod"
  - Title branded "Specially Constructed Vehicle"
- Modified
  - Titled as manufacturer's assigned model year, with manufacturer's name as make
  - Title and registration labeled "Modified"
  - Title branded "Specially Constructed Vehicle"
- Custom
  - Titled and registered showing model year as the year the vehicle was built, with "Custom-built" as make
  - Title branded "Specially Constructed Vehicle"

- Inoperable
  - Title branded "Inoperable"

Failure to disclose that a vehicle is inoperable or specially constructed. The PCS would make it a Class 2 misdemeanor for any person to transfer a motor vehicle when the person knows that the vehicle is, or was, a specially constructed vehicle or an inoperable vehicle without disclosing it in writing prior to the transfer.

Appeal of title classification. The PCS would create an appeal process from a classification determination to the Vehicle Classification Review Committee, which would consist of three personnel from the License and Theft Bureau and two members of the public appointed by the Commissioner. The decision of the Committee could be appealed to the Commissioner, and that decision would be final.

Tax of vehicles. The PCS would provide that the presumed market value of replica and custom built vehicles would be the value of their parts and materials plus the labor necessary to assemble them, and would add "inoperable vehicles" to the list of full exemptions from the Highway Use Tax.

EFFECTIVE DATE: The act would become effective October 1, 2009, and would apply to applications received by the Division of Motor Vehicles on or after that date.

S476-SMSU-51(CSSU-28) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 820
PROPOSED COMMITTEE SUBSTITUTE S820-CSSU-24 [v.3]

5/11/2009 12:23:28 PM

Short Title: Create New Titling Categories. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE NEW MOTOR VEHICLE TITLING AND REGISTRATION CATEGORIES FOR MOTOR VEHICLES CLASSIFIED AS REPLICA VEHICLES, STREET RODS, AND CUSTOM VEHICLES, AND TO MAKE CORRESPONDING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(43) reads as rewritten:

"(43) Specially Constructed Vehicles. – ~~Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.~~Motor vehicles, excluding motorcycles, that may be registered under this Chapter and that fit within one of the following categories:

a. Replica vehicle. – A vehicle originally sold unassembled and manufactured from a kit, which when assembled replicates an earlier year, make, and model vehicle.

b. Street rod vehicle. – A vehicle manufactured prior to 1949, which has been modernized from the manufacturer's original design or has a body constructed from nonoriginal materials and for which the owner seeks a street rod registration classification.

c. Custom vehicle. – A vehicle manufactured on or after 1949 and that is 25 years old or older, which has been modernized from the manufacturer's original design or has a body constructed from nonoriginal materials and for which the owner seeks a custom vehicle registration classification.

Unless the presence of specific equipment was required by State law as a condition of sale in the model year listed on the certificate of title, the presence of the equipment is not required for the operation of a specially constructed vehicle. Specially constructed vehicles are exempt from any provision of State law that requires periodic vehicle inspections or the use and inspection of emission controls."

SECTION 2. Part 3 of Article 3 of Chapter 20 is amended by adding a new section to read:

"**§ 20-53.1. Specially constructed vehicle certificate of title and registration.**

Specially constructed vehicles shall be titled in the following manner:

(1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of "Replica" shall be applied to the title and registration card. All replica vehicle titles shall be branded "Specially Constructed Vehicle".

(2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of "Street Rod" applied to the title and registration card. All street rod vehicle titles shall be branded "Specially Constructed Vehicle".

(3) The model year of a custom vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with the label of "Custom" applied to the title and registration card. All custom vehicle titles shall be branded "Specially Constructed Vehicle".

SECTION 3. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

(a) The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8.

(5) The required fee has not been paid, including any additional registration fees or taxes due pursuant to G.S. 20-91(c).

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture.

(8) The vehicle is a golf cart or utility vehicle.

(9) The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an "imminent hazard" as defined in 49 C.F.R. § 386.72(b)(1).

(10) **(Effective January 1, 2011)** The North Carolina Turnpike Authority has notified the Division that the owner of the vehicle has not paid the amount of tolls, fees, and civil penalties the owner owes the Authority for use of a Turnpike project.

(b) For specially constructed vehicles or vehicles originally built by a generally recognized manufacturer, certificates of title and registration shall not be denied or delayed on the grounds that the originating title is from out-of-state, the vehicle is of a certain age, or the vehicle has not been first inspected by a representative of the Division unless there is some probable cause to believe an individual vehicle has some issue particular to it that justifies an inspection before title and registration are issued."

SECTION 4. G.S. 20-70 is amended by adding a new subsection to read:

"(c) The notification and registration requirements contained in subsections (a) and (b) of this section regarding an engine change shall only be required if the motor vehicle into which a new engine is installed uses an engine number as the sole means to identify the vehicle."

SECTION 5. Sections 1 and 2 of this act become effective October 1, 2009, and apply to applications received by the Division of Motor Vehicles on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 820:
Create New Titling Categories

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 12, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S820-CSSU-24		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 820 would:

- ***Redefine "specially constructed vehicles" as replica vehicles, street rods, and custom vehicles.***
- ***Exempt specially constructed vehicles from vehicle inspections.***
- ***Require branding of specially constructed vehicle titles "Specially Constructed Vehicle" with title and registration labeled "Replica", "Street Rod", and "Custom", as appropriate.***
- ***Prohibit DMV from denying or delaying registration because originating title is out-of-state, the vehicle is a certain age, or the vehicle has not been inspected first by DMV.***
- ***Require notification and new registration with DMV when an engine in a vehicle is replaced only if the vehicle into which the new engine is installed uses an engine number as the sole means to identify the vehicle.***

CURRENT LAW: Any vehicle intended to be operated on the highway must be registered with the Division of Motor Vehicles, and the owner must apply to the Division for a certificate of title, registration plate, and registration card. The Division is required to refuse registration of any vehicle that is unfit or unsafe to be operated on the highway, or that the Division has reasonable grounds to believe is stolen or embezzled or that registering and titling the vehicle would constitute fraud against the rightful owner.

Under current law, a "specially constructed vehicle" is defined as one that is not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer and is *not materially altered* from original construction. A "reconstructed vehicle" is defined as one that *has been materially altered* from original construction due to removal, addition or substitution of parts, and includes custom assembled vehicles. A reconstructed vehicle must have a certificate of title and registration card that is branded as such, and it is a Class 2 misdemeanor to transfer a reconstructed vehicle without disclosing that fact in writing.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 820 would do the following:

Redefine "specially constructed vehicles". The PCS would delete the current definition, which includes that the vehicle not be materially altered from original construction. The new definition would include vehicles, excluding motorcycles, in the following categories:

- Replica – a vehicle sold unassembled, manufactured from a kit, and when assembled replicates an earlier year, make, and model vehicle.
- Street rod – a vehicle manufactured before 1949, modernized from the manufacturer's original design or with a body constructed from nonoriginal materials, for which the owner seeks a street rod classification.

- Custom – a vehicle manufactured on or after 1949 and that is 25 years old or older, modernized from the manufacturer's original design or with a body constructed from nonoriginal materials, for which the owner seeks a custom classification.

Exempt specially constructed vehicles from inspections. The PCS would exempt specially constructed vehicles from any periodic vehicle inspections required by law or the use and inspection of emission controls.

Title and registration of specially constructed vehicles. The PCS would provide that specially constructed vehicles be titled as follows:

- Replica
  - Titled as year, make, and model of vehicle replicated
  - Title and registration labeled "Replica"
  - Title branded "Specially Constructed Vehicle"
- Street Rod
  - Titled as manufacturer's assigned model year
  - Title and registration labeled "Street Rod"
  - Title branded "Specially Constructed Vehicle"
- Custom
  - Titled as manufacturer's assigned model year
  - Title and registration labeled "Custom"
  - Title branded "Specially Constructed Vehicle"

These categories of vehicles would no longer be branded as "Reconstructed Vehicle" or titled as the year they were assembled or altered.

Refusing registration. The PCS would prohibit the Division from denying or delaying registration and certificate of title based on the grounds that the originating title is from out-of-state, that the vehicle is a certain age, or that the vehicle has not been inspected by the Division, unless there is probable cause to believe the vehicle has an issue that justifies an inspection prior to issuing title and registration.

Notification and registration when new engine installed. Current law requires the owner of a vehicle to notify the Division when the engine is replaced and the engine number is on the registration records. The owner must also surrender the registration and title and apply for a duplicate with the new engine number. The PCS would make the notification and re-registration requirement applicable for an engine change only if the engine number is the sole means of identifying the vehicle.

EFFECTIVE DATE: The sections of the bill redefining "specially constructed vehicle" and providing for titling and registration of those vehicles would become effective October 1, 2009, and apply to applications received by the Division on or after that date. The remainder of the act would be effective when it becomes law.

S820-SMSU-50(CSSU-24) v4

SENATE COMMERCE COMMITTEE
Tuesday, May 12, 2009 at 6:15 PM
Room 544, Legislative Office Building

MINUTES

The Senate Commerce Committee met at 6:15 p.m., Tuesday, May 12, 2009, in Room 544 of the Legislative Office Building. Senator R.C. Soles presided. Twelve members of the committee were present.

S.B. 893 – Workers' Comp Self Insurance Security Ass'n.

The bill was before the committee to make a technical correction for a numerical typo, before being reported out. Senator Jenkins and Senator Apodaca moved to reconsider the proposed committee substitute (PCS). The motion carried. Tim Hovis, a staff attorney with the Research Division, was recognized to explain the correction. Senator Jenkins moved for a corrected favorable report and the motion carried. A copy of the PCS is attached.

S.B. 69 – CCPS Wrecker Service Fee Rules.

Senator Bingham was recognized to explain the bill. Senator Apodaca moved to adopt the PCS for discussion and the motion carried. The PCS prohibits 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. Thomas Caves, the legislative liaison for the Department of Crime Control and Public Safety, spoke in favor of the bill and answered questions. Colleen Kochanek, the lobbyist for the Towing and Recovery Professionals of NC, spoke in favor of the bill. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS is attached.

S.B. 1000 – Motor Vehicle Size and Weight Laws Changes.

Senator Jenkins was recognized to explain the bill which restricts the overall length of a single vehicle with two or more axles to forty feet, restricts the overall length of vehicles transporting poles for emergency repair to fifty-three feet, and makes certain farm vehicles be self-propelled. Senator Goss moved for a favorable report and the motion carried. A copy of the bill is attached.

S.B. 545 – Require Titles for Scrapped Vehicles.

Senator Graham was recognized to explain the bill which requires that a title be provided by a seller for a transaction with a secondary metals recycler or a salvage yard and amends a title for a motor vehicle in hand before the vehicle may be sold to a secondary metals recycler or a salvage yard. Senator Purcell moved for a favorable report and the motion carried. A copy of the bill is attached.

S.B. 698 – City/County Fee Increase on Internet.

Senator Boseman was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS requires that cities, counties, and sanitary districts give electronic notice of the

imposition of certain new fees and increases in certain existing fees. Senator Boseman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 894 – UI/School Teacher Related Amendments

Senator Hartsell was recognized to explain the bill. The bill amends the employment security laws relating to the definition of substitute teacher in determining eligibility for unemployment insurance benefits and relating to disqualification for benefits due to inability to obtain a license or certification necessary for the performance of an individual's employment. Senator Apodaca offered an amendment and moved for its adoption. The motion carried. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the amendment is attached.

S.B. 887 – Amend Electronics Recycling Law.

Senator Vaughan was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS makes further substantive, clarifying, technical, and conforming amendments to the laws governing the management of discarded computer equipment and discarded televisions. Senator Vaughan moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 889 – Utilities/Carrier of Last Resort.

Senator Vaughan was recognized to explain the bill and moved to adopt the PCS. The motion carried. The PCS further authorizes the Utilities Commission to determine the universal service provider in certain subdivisions and areas. Senator Vaughan moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 6:38 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 12, 2009

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

FAVORABLE

S.B. **545** Require Titles for Scrapped Vehicles.
Sequential Referral: None
Recommended Referral: None

S.B. **894** UI/School Teacher Related Amendments.
Sequential Referral: None
Recommended Referral: None

S.B. **1000** Motor Vehicle Size and Weight Law Changes.
Sequential Referral: None
Recommended Referral: None

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

S.B. **6** Beach Plan and Ins. Rate and Deductible Stay.
Draft Number: 35326
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **18** Amend Cemetery Act.
Draft Number: 35331
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **69** CCPS Wrecker Service Fee Rules.
Draft Number: 85224
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **820** Create New Titling Categories.
Draft Number: 15274
Sequential Referral: None

		Recommended Referral:	None
		Long Title Amended:	Yes
S.B.	**893**	Workers' Comp Self-Insurance Security Ass'n.	
		Draft Number:	35327
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	**913**	Clarify Motor Vehicle Franchise Laws.	
		Draft Number:	55395
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	**914**	Clarify MV Dealer Termination Assistance.	
		Draft Number:	85228
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 10

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 12, 2009

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

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

S.B. **698** City/County Fee Increase on Internet.

Draft Number:	55385
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **887** Amend Electronics Recycling Law.

Draft Number:	85231
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **889** Utilities/Carrier of Last Resort.

Draft Number:	35319
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **894** UI/School Teacher Related Amendments.

Draft Number:	15277
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **974** Consumer Economic Protection Act of 2009.

Draft Number:	35328
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, May 12, 2009
Fifteen minutes after adjournment
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 69	CCPS Wrecker Service Fee Rules.	Sen. Bingham
SB 545	Require Titles for Scrapped Vehicles.	Sen. Graham
SB 698	City/County Fee Increase on Internet.	Sen. Boseman
SB 887	Amend Electronics Recycling Law.	Sen. Vaughan
SB 889	Utilities/Carrier of Last Resort.	Sen. Vaughan
SB 893	Workers' Comp Self-Insurance Security Ass'n.	Sen. Hartsell
SB 894	UI/School Teacher Related Amendments.	Sen. Hartsell
SB 1000	Motor Vehicle Size and Weight Law Changes.	Sen. Jenkins

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 893
PROPOSED COMMITTEE SUBSTITUTE S893-PCS35327-RG-24

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 69
PROPOSED COMMITTEE SUBSTITUTE S69-PCS85224-LB-46

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.

SENATE BILL 1000

Short Title:	Motor Vehicle Size and Weight Law Changes.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE OVERALL LENGTH OF A SINGLE VEHICLE WITH TWO OR MORE AXLES TO FORTY FEET, TO RESTRICT THE OVERALL LENGTH OF VEHICLES TRANSPORTING POLES FOR EMERGENCY REPAIR TO FIFTY-THREE FEET, AND TO MAKE CERTAIN FARM VEHICLES BE SELF-PROPELLED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 reads as rewritten:

"**§ 20-116. Size of vehicles and loads.**

(a) The total outside width of any vehicle or the load thereon shall not exceed 102 inches, except as otherwise provided in this section. When hogsheads of tobacco are being transported, a tolerance of six inches is allowed. When sheet or bale tobacco is being transported the load must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. Vehicles (other than passenger buses) that do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g).

(b) No passenger-type vehicle or recreational vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle, unladen or with load, shall exceed a height of 13 feet, six inches. Provided, however, that neither the State of North Carolina nor any agency or subdivision thereof, nor any person, firm or corporation, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of 12 feet, six inches. Provided further, that the operator or owner of any vehicle having an overall height, whether unladen or with load, in excess of 12 feet, six inches, shall be liable for damage to any structure caused by such vehicle having a height in excess of 12 feet, six inches.

(d) Maximum Length. – The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(1) Except as otherwise provided in this subsection, a single vehicle having two or ~~three~~ more axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.

(2) Trucks transporting unprocessed cotton from farm to gin shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.

(3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors.

(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Motor vehicle combinations of one semitrailer of not more than 53 feet in length and a truck tractor (power unit) may exceed the 60-foot maximum length. Said maximum overall length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or ~~properties,~~properties, provided the trailer length does not exceed 53 feet in length, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers may tow a truck, combination tractor and trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. ~~Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers.~~ Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the foremost part of the vehicle. Under this subsection "load" shall include the boom on a self-propelled vehicle.

A utility pole carried by a self-propelled pole carrier may extend beyond the front overhang limit set in this subsection if the pole cannot be dismembered, the pole is less than 80 feet in length and does not extend more than 10 feet beyond the front bumper of the vehicle, and either of the following circumstances apply:

(1) It is daytime and the front of the extending load of poles is marked by a flag of the type required by G.S. 20-117 for certain rear overhangs.

(2) It is nighttime, operation of the vehicle is required to make emergency repairs to utility service, and the front of the extending load of poles is marked by a light of the type required by G.S. 20-117 for certain rear overhangs.

As used in this subsection, a "self-propelled pole carrier" is a vehicle designed to carry a pole on the side of the vehicle at a height of at least five feet when measured from the bottom of the brace used to carry the pole. A self-propelled pole carrier may not tow another vehicle when carrying a pole that extends beyond the front overhang limit set in this subsection.

(g) (1) No vehicle shall be driven or moved on any highway unless the vehicle is constructed and loaded to prevent any of its load from falling, blowing,

dropping, sifting, leaking, or otherwise escaping therefrom, and the vehicle shall not contain any holes, cracks, or openings through which any of its load may escape. However, sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled, dumped, or spread on a roadway in cleaning or maintaining the roadway. For purposes of this subsection, load does not include water accumulated from precipitation.

(2) A truck, trailer, or other vehicle licensed for more than 7,500 pounds gross vehicle weight that is loaded with rock, gravel, stone, or any other similar substance, other than sand, that could fall, blow, leak, sift, or drop shall not be driven or moved on any highway unless:

a. The height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point; and

b. The load is securely covered by tarpaulin or some other suitable covering to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(3) A truck, trailer, or other vehicle:

a. Licensed for any gross vehicle weight and loaded with sand; or

b. Licensed for 7,500 pounds or less gross vehicle weight and loaded with rock, gravel, stone, or any other similar substance that could fall, blow, leak, sift, or drop;

shall not be driven or moved on any highway unless:

a. The height of the load against all four walls does not extend above a horizontal line six inches below the top when loaded at the loading point;

b. The load is securely covered by tarpaulin or some other suitable covering; or

c. The vehicle is constructed to prevent any of its load from falling, dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

(4) This section shall not be applicable to or in any manner restrict the transportation of seed cotton, poultry or livestock, or silage or other feed grain used in the feeding of poultry or livestock.

(h) Whenever there exist two highways of the State highway system of approximately the same distance between two or more points, the Department of Transportation may, when in the opinion of the Department of Transportation, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served, designate one of the highways the "truck route" between those points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways selected for heavy vehicle traffic shall be designated as "truck routes" by signs conspicuously posted, and the highways upon which heavy vehicle traffic is prohibited shall likewise be designated by signs conspicuously posted showing the maximum gross vehicle weight or axle load limits authorized for those highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on signs over the posted highway shall constitute a Class 2 misdemeanor: Provided, that nothing in this subsection shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for those highways from using them when its destination is located solely upon that highway, road or street: Provided, further, that nothing in this subsection shall prohibit passenger vehicles or other light vehicles from using any highways designated for heavy truck traffic.

(i) Repealed by Session Laws 1973, c. 1330, s. 39.

(j) Nothing in this section shall be construed to prevent the operation of self-propelled grain combines or other farm equipment self-propelled, ~~pulled, or otherwise,~~ not exceeding 25 feet in width on any highway, except a highway or section of highway that is a fully controlled access highway or is a part of the National System of Interstate and Defense Highways. Farm equipment includes a vehicle that is designed exclusively to transport compressed seed cotton from a farm to a gin and has a self-loading bed. Combines or equipment which exceed 10 feet in width may be operated only if they meet all of the conditions listed in this subsection. A violation of one or more of these conditions does not constitute negligence per se.

(1) The equipment may only be operated during daylight hours.

(2) The equipment must display a red flag on front and rear ends. The flags shall not be smaller than three feet wide and four feet long. The flags shall be attached to a stick, pole, staff, etc., not less than four feet long and they shall be attached to the equipment as to be visible from both directions at all times while being operated on the public highway for not less than 300 feet.

(3) Equipment covered by this section, which by necessity must travel more than 10 miles or where by nature of the terrain or obstacles the flags referred to in subdivision (2) of this subsection are not visible from both directions for 300 feet at any point along the proposed route, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman in a vehicle having mounted thereon an appropriate warning light or flag. No flagman in a vehicle shall be required pursuant to this subdivision if the equipment is being moved under its own power or on a trailer from any field to another field, or from the normal place of storage of the vehicle to any field, for no more than ten miles and if visible from both directions for 300 feet at any point along the proposed route.

(4) Every piece of equipment so operated shall operate to the right of the center line when meeting traffic coming from the opposite direction and at all other times when possible and practical.

(5) Repealed by Session Laws 2008-221, s. 6, effective September 1, 2008.

(6) When the equipment is causing a delay in traffic, the operator of the equipment shall move the equipment off the paved portion of the highway at the nearest practical location until the vehicles following the equipment have passed.

(7) The equipment shall be operated in the designed transport position that minimizes equipment width. No removal of equipment or appurtenances is required under this subdivision.

(k) Nothing in this section shall be construed to prevent the operation of passenger buses having an overall width of 102 inches, exclusive of safety equipment, upon the highways of this State which are 20 feet or wider and that are designated as the State primary system, or as municipal streets, when, and not until, the federal law and regulations thereunder permit the operation of passenger buses having a width of 102 inches or wider on the National System of Interstate and Defense Highways.

(l) Nothing in this section shall be construed to prevent the operation of passenger buses that are owned and operated by units of local government, operated as a single vehicle only and having an overall length of 45 feet or less, on public streets or highways. The Department of Transportation may prevent the operation of buses that are authorized under this subsection if the operation of such buses on a street or highway presents a hazard to passengers of the buses or to the motoring public.

(m) Notwithstanding subsection (a) of this section, a boat or boat trailer with an outside width of less than 120 inches may be towed without a permit. The towing of a boat or boat trailer 102 inches to 114 inches in width may take place on any day of the week, including

weekends and holidays, and may take place at night. The towing of a boat or boat trailer 114 inches to 120 inches in width may take place on any day of the week, including weekends and holidays from sun up to sun down. A boat or boat trailer in excess of 102 inches but less than 120 inches must be equipped with a minimum of two operable amber lamps on the widest point of the boat and the boat trailer such that the dimensions of the boat and the boat trailer are clearly marked and visible."

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

SENATE BILL 545

Short Title:	Require Titles for Scrapped Vehicles.	(Public)
Sponsors:	Senator Graham.	
Referred to:	Commerce.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A TITLE BE PROVIDED BY A SELLER FOR A TRANSACTION WITH A SECONDARY METALS RECYCLER OR A SALVAGE YARD AND TO AMEND A TITLE FOR A MOTOR VEHICLE IN HAND BEFORE THE VEHICLE MAY BE SOLD TO A SECONDARY METALS RECYCLER OR A SALVAGE YARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-61 reads as rewritten:

"**§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration.**

~~Except as permitted under G.S. 20-62.1, any~~Any owner dismantling or wrecking any vehicle shall forward to the Division the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title."

SECTION 2. G.S. 20-62.1(a) reads as rewritten:

"(a) Records for Scrap or Parts. – A secondary metals recycler, as defined in G.S. 66-11(a)(3), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the recovery of scrap metal or for the sale of parts only, must comply with the provision of ~~G.S. 20-61, provided, however, that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older and the secondary metals recycler or salvage yard comply with~~G.S. 20-61 and the following requirements:

(1) Maintain a record of all purchase transactions of motor vehicles. The following information shall be maintained for transactions of motor vehicles:
   a. The name and address of the secondary metals recycler or salvage yard.
   b. The name, initials, or other identification of the individual entering the information.
   c. The date of the transaction.
   d. A description of the motor vehicle, including the make and model to the extent practicable.
   e. The vehicle identification number (VIN) of the vehicle.

f. The amount of consideration given for the motor vehicle.
g. A written 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 motor vehicle.
h. The name and address of the person from whom the motor vehicle is being purchased.
i. A photocopy or electronic scan of a valid drivers license or identification card issued by the Division of Motor Vehicles of the seller of the motor vehicle, or seller's agent, to the secondary metals recycler or salvage yard, or in lieu thereof, any other identification card containing a photograph of the seller as issued by any state or federal agency of the United States: provided, that if the buyer has a copy of the seller's photo identification on file, the buyer may reference the identification that is on file, without making a separate photocopy for each transaction. If seller has no identification as described in this sub-subdivision, the secondary metals recycler or salvage yard shall not complete the transaction.
j. A photocopy or electronic scan of the certificate of title issued by the Division of Motor Vehicles for the vehicle being purchased by the secondary metals recycler or salvage yard.
k. A receipt for the purchase of the motor vehicle which is signed by all parties to the sale and upon which the seller or sellers shall be required to lace a clear, unsmeared impression in ink of their index finger next to the seller's signature.

(2) Maintain the information required under subdivision (1) of this subsection for not less than two years from the date of the purchase of the motor vehicle."

SECTION 3. This act becomes effective December 1, 2009, and applies to motor vehicles sold to, or purchased by, a secondary metals recycler or salvage yard on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 698
PROPOSED COMMITTEE SUBSTITUTE S698-CSRL-37 [v.1]

5/11/2009 12:35:31 PM

Short Title: City/County/Sanitary District Fees/ Internet. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT CITIES, COUNTIES, AND SANITARY DISTRICTS GIVE ELECTRONIC NOTICE OF THE IMPOSITION OF CERTAIN NEW FEES AND INCREASES IN CERTAIN EXISTING FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-102.1. Electronic notice of new fees and fee increases.**

(a) If a county has a Web site maintained by one or more of its employees the county shall provide notice of the imposition of or increase in fees or charges levied in connection with Article 18 of this Chapter on the county's Web site at least seven days prior to the first regular meeting where the imposition or increase of the fees or charges will be discussed.

(b) Subsection (a) of this section shall not apply if the imposition or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12."

SECTION 2. Article 1 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-4.1. Electronic notice of new fees and fee increases.**

(a) If a city has a Web site maintained by one or more of its employees the city shall provide notice of the imposition of or increase in fees or charges levied in connection with Article 19 of this Chapter on the city's Web site at least seven days prior to the first regular meeting where the imposition or increase of the fees or charges will be discussed.

(b) Subsection (a) of this section shall not apply if the imposition or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12."

SECTION 3. Part 2 of Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-64.1. Electronic notice of new or increased charges and rates.**

(a) If a sanitary district has a Web site maintained by one or more of its employees the sanitary district shall provide notice of the imposition of or increase in service charges or rates for any service provided by the sanitary district on the sanitary district's Web site at least seven days prior to the first meeting where the imposition or increase of the charges or rates will be discussed.

(b) Subsection (a) of this section shall not apply if the imposition or increase in service charges or rates is contained in a budget filed in accordance with the requirements of G.S. 159-12."

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

SENATE BILL 698:
City/County/Sanitary District Fees/Internet

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Steven Rose
Analysis of:	PCS to First Edition S698-CSRL-37		Committee Counsel

SUMMARY: ***The PCS for SB 698 provides that when a county or city imposes or increases fees or charges in connection with planning and regulation of development, notice of the imposition or increase must be posted on the city or county Web site at least 7 days in advance of the first regular meeting where the fee or charge will be discussed, provided the Web site is maintained by municipal or county employees. The same requirement is imposed on sanitary districts with respect to charges or rates for any service they provide. The requirement is not imposed if the imposition or increase is contained in the budget document required to be filed with the clerk of the body.***

CURRENT LAW: Cities and counties are authorized to impose fees and charges for municipal and county activities they are authorized by law to carry out, including those authorized in connection with planning and development activities. G.S. 160A-4 (cities) and G.S. 153A-102 (counties). Sanitary districts operate sewerage disposal and drinking water systems pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes and are authorized to impose charges and rates for those activities.

BILL ANALYSIS: See the summary above. The PCS made the following changes from the original bill:

- Original bill imposed a Web site notice requirement with respect to fees and charges for any city or county service or public enterprise seven days prior to imposition or increase of a fee or charge.
- Original bill required newspaper notice if the city or county did not have a Web site.
- Original bill did not apply to sanitary districts.

EFFECTIVE DATE: Effective July 1, 2009.

S698-SMRL-65(CSRL-37) v1

SENATE BILL 894

Short Title:	UI/School Teacher Related Amendments.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAWS RELATING TO THE DEFINITION OF SUBSTITUTE TEACHER IN DETERMINING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS AND RELATING TO DISQUALIFICATION FOR BENEFITS DUE TO INABILITY TO OBTAIN A LICENSE OR CERTIFICATION NECESSARY FOR THE PERFORMANCE OF AN INDIVIDUAL'S EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(6)k. is amended by adding a new sub-subdivision to read:

"21. Service performed by a substitute teacher or other substitute employee for a public, charter, or private school unless the individual was employed as a full-time permanent substitute. For the purposes of this sub-subdivision only, an individual is employed as a full-time substitute when employed to work on an indefinite basis no less than 30 hours per week."

SECTION 2. G.S. 96-8(10)e. is repealed.

SECTION 3. G.S. 96-14(2b) reads as rewritten:

"(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~~ the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to ~~him,~~the individual, or ~~his~~ the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within his power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision."

SECTION 4. This act is effective when it becomes law and applies to claims filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE 5/12/09

S. B. No. 894 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by deleting the words "a new sub-subdivision" and substituting the words "the following new sub-subdivisions";

and on page 1, line 15, by deleting the word "week." and substituting the following:

"week.

22. Performance of extra duties for a public, charter or private school. Such extra duties include coaching athletics, acting as a choral director or such other similar activities.";

and on page 1, 3, by adding after the word "TEACHER" the words "AND OTHER SCHOOL-RELATED POSITIONS".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 887
PROPOSED COMMITTEE SUBSTITUTE S887-CSRG-26 [v.1]

5/11/2009 6:58:43 PM

Short Title: Amend Electronics Recycling Law. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE FURTHER SUBSTANTIVE, CLARIFYING, TECHNICAL, AND CONFORMING AMENDMENTS TO THE LAWS GOVERNING THE MANAGEMENT OF DISCARDED COMPUTER EQUIPMENT AND DISCARDED TELEVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.91 reads as rewritten:

"**§ 130A-309.91. (Effective January 1, 2010) Definitions.**

As used in this Part, the following definitions apply:

(1) Business entity. – Defined in G.S. 55-1-40(2a).

(2) Computer equipment. – Any desktop ~~central processing unit, any laptop~~ computer, notebook computer, the monitor or video display unit for a computer system, and the keyboard, mice, and other peripheral equipment. Computer equipment does not include a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer; an automated typewriter, professional workstation, servers, ICI device, ICI system, mobile telephone, portable handheld calculator, portable digital assistant (PDA), MP3 player, or other similar device; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.

(2a) Computer equipment manufacturer. – A person that manufactures computer equipment sold under its own brand or label; sells or has sold under its own brand or label computer equipment produced by other suppliers; imports or has imported into the United States computer equipment that was manufactured outside of the United States; or owns or has owned a brand that it licenses or has licensed to another person for use on computer equipment. ~~Manufacturer~~ Computer equipment manufacturer includes a business entity that acquires another business entity that manufactures or has manufactured computer equipment. Computer equipment manufacturer does not include any existing person that manufactures computer equipment that

the Department determines is of such a character that the computer equipment would not be used by consumers, unless such a manufacturer also manufactures or has manufactured one or more kinds of computer equipment that are of such a character as to be used by consumers, in which event the person is a computer equipment manufacturer under this subdivision. Computer equipment manufacturer does not include any existing person who both:

a. Owns and licenses the brand appearing on the computer equipment.

b. Has not manufactured or sold the computer equipment.

(2b) Covered device. – Computer equipment and televisions. The term does not include a device that is:

a. Part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

b. (i) Physically a part of or integrated within a larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting; (ii) equipment used for diagnostic, monitoring, or other medical products as that term is defined under the Federal Food, Drug, and Cosmetic Act; (iii) equipment used for security, sensing, monitoring, antiterrorism purposes, or emergency services purposes.

c. Contained within a household appliance, including, but not limited to, a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.

(2c) Desktop computer. – An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:

a. Performs logical, arithmetic, and storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.

b. Is not designed to exclusively perform a specific type of limited or specialized application.

c. Achieves human interface through a stand-alone keyboard, stand-alone monitor or other display unit, and a stand-alone mouse or other pointing device.

d. Is designed for a single user.

e. Has a main unit that is intended to be persistently located in a single location, often on a desk or on the floor.

(3) Discarded computer equipment. – Computer equipment that is solid waste.

(3a) Discarded television. – A television that is solid waste.

(4) Discarded computer equipment or television collector. – A municipal or county government, nonprofit agency, recycler, or retailer that accepts discarded computer equipment or a television from ~~the public~~occupants of single detached dwelling units and single units in multiple dwelling units for any such occupant who has used a covered device primarily for personal or home business use.

(5) Recodified as G.S. 130A-309.91(2a).

(5a) Market share. – A television manufacturer's obligation to recycle discarded televisions. A television manufacturer's market share is the television

manufacturer's prior year's sales of televisions as calculated by the Department pursuant to G.S. 130A-309.95(4) divided by all manufacturers' prior year's sales for all televisions as calculated by the Department pursuant to G.S. 130A-309.95(4). Market share may be expressed as a percentage, a fraction, or a decimal fraction.

(5b) Notebook computer. – An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:

a. Performs logical, arithmetic, or storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.

b. Is not designed to exclusively perform a specific type of limited or specialized application.

c. Achieves human interface through a keyboard, video display greater than four inches in size, and mouse or other pointing device, all of which are contained within the construction of the unit that comprises the computer.

d. Is able to be carried as one unit by an individual.

e. Is able to use external, internal, or batteries for a power source.

Notebook computer includes those that have a supplemental stand-alone interface device attached to the notebook computer. Notebook computer does not include a portable handheld calculator, a portable digital assistant (PDA), or similar specialized device. A notebook computer is sometimes referred to as a laptop computer.

(6) ~~Orphan discarded computer equipment. Any discarded computer equipment for which a manufacturer cannot be identified or for which the manufacturer is no longer in business and has no successor in interest.~~

(6a) Recover. – The process of reusing or recycling covered devices.

(6b) Recycle. – The processing, including disassembling, dismantling, and shredding, of covered devices or their components to recover a usable product. Recycle does not include any process that results in the incineration of the product.

(6c) Recycler. – A person that recycles covered devices.

(7) Retailer. – A person that sells computer equipment or televisions in the State to a consumer. Retailer includes a ~~manufacturer of computer equipment or televisions~~ computer equipment manufacturer or a television manufacturer that sells directly to a consumer through any means, including transactions conducted through sales outlets, catalogs, the Internet, or any similar electronic means, but does not include a person that sells computer equipment or televisions to a distributor or retailer through a wholesale transaction.

(8) Television. – Any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of 9 inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include computer equipment.

(9) Television manufacturer. – A person that: (i) manufactures for sale in this State a television under a brand that it licenses or owns; (ii) manufactures for sale in this State a television without affixing a brand; (iii) resells into this State a television under a brand it owns or licenses produced by other suppliers, including retail establishments that sell a television under a brand that the retailer owns or licenses; (iv) imports into the United States or exports from the United States a television for sale in this State; (v) sells at retail a television acquired from an importer that is the manufacturer as described in sub-subdivision (iv) of this subdivision, and the retailer elects to register in lieu of the importer as the manufacturer of those products; (vi) manufactures a television for or supplies a television to any person within a distribution network that includes wholesalers or retailers in this State and that benefits from the sale in this State of the television through the distribution network; or (vii) assumes the responsibilities and obligations of a television manufacturer under this Part. In the event the television manufacturer is one that manufactures, sells, or resells under a brand it licenses, the licensor or brand owner of the brand ~~shall not be considered to be~~is not a television manufacturer under (i) or (iii) of this subdivision."

SECTION 2. G.S. 130A-309.93(c) reads as rewritten:

"(c) Computer Equipment Recycling Plan. – Each computer equipment manufacturer ~~of computer equipment~~ shall develop and submit to the Department a plan for reuse or recycling of discarded computer equipment in the State produced by the manufacturer. The manufacturer's responsibility under this Part and its plan under this section are limited to reusing or recycling computer equipment that is discarded by occupants of a single detached dwelling unit or a single unit of a multiple dwelling unit who have used the computer equipment primarily for personal or home business use. The manufacturer shall submit a proposed plan to the Department within 120 days of registration as required by subsection (a) of this section. The plan shall:

(1) Describe any direct take-back program to be implemented by the manufacturer, including mail-back programs and collection events.

(2) Provide that the manufacturer will take responsibility for discarded computer equipment it manufactured.

(3) Include a detailed description as to how the manufacturer will implement and finance the plan.

(4) Provide for environmentally sound management practices to transport and recycle discarded computer equipment.

(5) Describe the performance measures that will be used by the manufacturer to document recovery and recycling rates for discarded computer equipment. The calculation of recycling rates shall include the amount of discarded computer equipment managed under the manufacturer's program divided by the amount of computer equipment sold by the manufacturer in North Carolina.

(6) Describe in detail how the manufacturer will provide for transportation of discarded computer equipment at no cost from discarded computer equipment collectors.

(7) Describe in detail how the manufacturer will fully cover the costs of processing discarded computer equipment received from discarded computer equipment collectors.

(8) Include a public education plan on the laws governing the recycling and reuse of discarded computer equipment under this Part and on the methods available to consumers to comply with those requirements."

SECTION 3. G.S. 130A-309.93 is amended by adding a new subsection to read:

"(h) Data Security. – Computer equipment manufacturers shall not be liable in any way for data or other information left on a covered device that is collected or recovered."

SECTION 4. G.S. 130A-309.93A(c) reads as rewritten:

"(c) The obligation to recycle televisions shall be allocated to each television manufacturer based on the television manufacturer's market share. A television manufacturer must annually recycle or arrange for the recycling of its market share of televisions pursuant to this section. The manufacturer's obligation to recycle its market share of televisions is limited to televisions that are discarded by occupants of a single detached dwelling unit or a single unit of a multiple dwelling unit who have used the televisions primarily for personal or home business use."

SECTION 5. G.S. 130A-309.93A is amended by adding a new subsection to read:

"(h) Data Security. – Television manufacturers shall not be liable in any way for data or other information left on a covered device that is collected or recovered."

SECTION 6. G.S. 130A-309.93B is amended by adding a new subsection to read:

"(d) A retailer shall not be liable in any way for data or other information left on a covered device that is collected or recovered."

SECTION 7. G.S. 130A-309.94 reads as rewritten:

"**§ 130A-309.94. Requirements for discarded computer equipment and television collectors.**

(a) Each discarded computer equipment and television collector shall ensure that discarded computer equipment and televisions received by the collector are properly stored, and either held for pickup by a manufacturer or delivered to a facility designated by a manufacturer.

(b) A discarded computer equipment and television collector shall not be liable in any way for data or other information left on a covered device that is collected or recovered."

SECTION 8. G.S. 147-33.104 reads as rewritten:

"**§ 147-33.104. (Effective July 1, 2010, until January 1, 2011) Purchase by State agencies and governmental entities of certain computer equipment prohibited.**

(a) The exemptions set out in G.S. 147-33.80 do not apply to this section.

(b) No State agency, political subdivision of the State, or other public body shall ~~purchase computer equipment,~~enter into any contract with a computer equipment manufacturer, as defined in G.S. 130A-309.91, ~~from any manufacturer determined not to be~~that the Secretary determines is not in compliance with the requirements of G.S. 130A-309.93 or with a television manufacturer, as defined in G.S. 130A-309.91, that the Secretary determines is not in compliance with the requirements of G.S. 130A-309.93A as determined from the list provided by the Department of Environment and Natural Resources pursuant to G.S. 130A-309.95(1). The Secretary shall issue written findings upon a determination of noncompliance. A determination of noncompliance by the Secretary is reviewable under Article 3 of Chapter 150B of the General Statutes.

(c) The Office of Information Technology Services shall make the list available to political subdivisions of the State and other public bodies. A computer equipment manufacturer that is not in compliance with the requirements of G.S. 130A-309.93 and a television manufacturer that is not in compliance with the requirements of G.S. 130A-309.93A shall not ~~sell or offer for sale computer equipment to~~be awarded a contract by the State, a political subdivision of the State, or other public body.

(d) In considering bids for any State contract by any computer equipment manufacturer or any television manufacturer, as defined in G.S. 130A-309.91, the State agency, political subdivision of the State, or other public body shall, in addition to any other preferences provided elsewhere under State law, give preference to a computer equipment manufacturer and a television manufacturer that has a program to recover other manufacturers' computer and

1 television equipment, including, but not limited to, collection events, recycling grants, and
2 manufacturer initiatives to take back any brand of computer equipment or television equipment
3 with the purchase of a similar product."
4 **SECTION 9.** This act is effective when it becomes law.

SENATE BILL 887:
Amend Electronics Recycling Law

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 11, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Tim Hovis
Analysis of:	PCS to First Edition S887-CSRG-26		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 887 makes changes to **Part 2E, Discarded Computer Equipment Management,** governing the disposal of electronic waste, including computer and television equipment, by manufacturers.

CURRENT LAW: In 2007, S.L. 2007-550 was enacted to establish **Part 2E, Discarded Computer Equipment Management, of Chapter 130A of the General Statutes, Solid Waste Management,** for the recycling of discarded computer and television equipment effective January 1, 2010. Among its provisions are the following:

- Prohibits the disposal of discarded computer equipment in landfills or by incineration (effective 1 January 2011.)
- Requires each manufacturer of computer equipment sold in the State to register with the Department, pay a $10,000 initial registration fee and an annual registration fee of $1,000, submit a plan to the Department for the recycling or reuse of computer and television equipment produced by the manufacturer and discarded by households in the State, and pay the reasonable costs of operating a certified computer recycling facility that are attributable to handling discarded equipment by households in the State.
- Requires computers sold in the State to include a label identifying the manufacturer.
- Prohibits manufacturers not in compliance with requirements from selling computer equipment to the State and to political subdivisions of the State.
- Authorizes the Attorney General to commence a civil action against a manufacturer to recover costs, in addition to any fines or penalties imposed.

BILL ANALYSIS: **Section 1** of the bill makes changes to the definitions contained in Part 2E. Changes include the following:

- Adds several types of equipment to the definition of computer equipment, including a notebook computer.
- The definition of manufacturer is amended to exclude a manufacturer of equipment that would not be used by consumers, unless the manufacturer also manufactures or has manufactured other equipment that would be used by consumers. Throughout this definition changes are made to apply the definition not just to manufacturers that currently sell, own, import or license equipment or brands, but also have sold, owned, imported or licensed equipment or brands. Language is also added to exempt manufacturers who both own and license brands and who have not manufactured or sold the equipment.
- Definitions of desktop computer, notebook computer, recover and recycle are added.

Section 2 provides that computer equipment recycling plans (required under existing law) are limited to reusing or recycling computer equipment that is discarded by occupants of a single detached dwelling unit or s single unit of a multiple dwelling who have used the equipment for personal or home business use.

Sections 3, 5, 6, and 7 add new language to existing sections to provide that computer equipment and television manufacturers, retailers, and discarded equipment collectors are not liable for data left on a covered device that is collected or recovered.

Section 4 provides that a manufacturer's obligation to recycle its market share of televisions is limited to televisions that are discarded by occupants of a single detached dwelling unit or single unit of a multiple dwelling who have used the equipment for personal or home business use.

Section 8 makes changes to the statute governing the purchase of equipment by state agencies, political subdivisions, or other public bodies from manufacturers that are not in compliance with registration, labeling, and recycling requirements. The changes would provide that State, local and other public bodies are prohibited from entering into any contract with noncompliant manufacturers and also requires public bodies to give preferences to equipment manufacturers that have programs to recover other manufacturers' equipment.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 887 is effective when it becomes law.

S887-SMRG-43(CSRG-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 889
PROPOSED COMMITTEE SUBSTITUTE S889-CSRL-25 [v.1]

4/29/2009 5:23:59 PM

Short Title: Utilities/Carrier of Last Resort. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT FURTHER AUTHORIZING THE UTILITIES COMMISSION TO DETERMINE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110 reads as rewritten:

"**§ 62-110. Certificate of convenience and necessity.**

...

(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, 1995. Each local exchange company or telecommunications service provider with carrier of last resort responsibility may satisfy its carrier of last resort obligation by using any available technology. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal services, and whether universal service should be funded through interconnection rates or through some other funding mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates.

...

(f3) The provisions of subsection (f1) of this section shall not be applicable to areas served by telephone membership corporations formed and existing under Article 4 of Chapter 117 of the General Statutes and exempt from regulation as public utilities, pursuant to G.S. 62-3(23)d. and G.S. 117-35. To the extent a telephone membership corporation has carrier of last resort obligations, it may fulfill those obligations using any available technology.

(f4) When any telecommunications service ~~provider~~ provider: (i) enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunications service providers has not been granted coincident with any other grant of access by the property ~~owner,~~owner; or (ii) enters into an agreement after July 1, 2008, to provide communications service that otherwise precludes the local exchange company from providing communications service for the subdivision or other area, the local exchange company is not obligated to provide basic local exchange telephone service or any other communications service to customers in the subdivision or other area. In each of the foregoing instances, the

telecommunications service provider ~~entering into the agreement~~ shall be the ~~universal service~~ provider in the subdivision or other ~~area.~~area under the terms of the agreement and applicable law. ~~If the~~The local exchange company for the franchise area or territory in which the subdivision or other area is located ~~is not a party to the agreement, the local exchange company~~ shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other telecommunications service providers shall retain the option, but not the obligation, to serve customers in the subdivision or other area. The local exchange company shall provide written notification to the appropriate State agency that ~~it~~ the local exchange company is no longer the universal service provider for the subdivision or other area. The appropriate State agency shall retain the right to redesignate a local exchange company or telecommunications service provider as the universal service provider in accordance with the provisions of subsection (f5) of this section. Any person that enters into an agreement with a telecommunications service provider to provide local exchange service for a subdivision or other area as described in this subsection shall notify a purchaser of real property within the subdivision or other area of the agreement.

For any circumstance not described in this subsection, a local exchange company may be granted a waiver of its carrier of last resort obligation in a subdivision or other area by the appropriate State agency based upon a showing by the local exchange company of all of the following:

(1) Providing service in the subdivision or area would be inequitable or unduly burdensome.

(2) One or more alternative providers of local exchange service exist.

(3) Granting the waiver is in the public interest.

(f5) If the appropriate State agency finds, upon hearing, that the telecommunications service provider ~~that entered into the agreement,~~ serving the subdivision or other area pursuant to subsection (f4) of this section, or its successor in interest, is no longer willing or no longer able to provide adequate services to the subdivision or other area, the appropriate State agency may redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located, or another telecommunications service provider, to be the universal service provider for the subdivision or other area. If the redesignated local exchange company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it may treat the costs incurred in extending its facilities into the subdivision or other area as exogenous to that form of regulation and may, subject to providing written notice to the Commission, adjust its rates to recover these costs on an equitable basis from its customers whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to review by the Commission in a complaint proceeding initiated by any interested party pursuant to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending its facilities into the subdivision or other area in the form of a surcharge, subject to Commission approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a), without having to file a general rate case proceeding. During the period that a telecommunications service provider is serving as a universal service provider and prior to the redesignation of a local exchange company as the universal service provider as provided for herein, for the purposes of the appropriate State agency's periodic certification to the Federal Communications Commission in matters regarding eligible telecommunications carrier status, a local company's status shall not be deemed to affect its eligibility to be an eligible telecommunications carrier, and the appropriate State agency shall so certify.

(f6) For purposes of subsections (f4) and (f5) of this section, the following definitions are applicable:

(1) "Appropriate State agency" means the Commission for purposes of any subdivision or other area within the franchise area of a local exchange

company, and the Rural Electrification Authority for the purposes of any subdivision or other area within the franchise area or territory of a telephone membership corporation.

(2) "Local exchange company" means a local exchange company subject to price regulation, or other alternative regulation or rate base regulation by the Commission or a telephone membership corporation organized under G.S. 117-30.

(3) "Telecommunications service provider" means a competing local provider, or any other person providing local exchange service by means of voice-over-Internet protocol, wireless, power line, satellite, or other nontraditional means, whether or not regulated by the Commission, but the term shall not include local exchange companies or telephone membership corporations.

(4) "Communications service" means either voice, video, or data service through any technology.

...."

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

SENATE BILL 889:
Utilities/Carrier of Last Resort

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 4, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Steven Rose
Analysis of:	PCS to First Edition S889-CSRL-25		Committee Counsel

SUMMARY: ***The PCS for SB 889 would allow carriers of last resort to meet their obligations by using any available technology, and would relieve carriers of last resort from their obligations in certain circumstances.***

[As introduced, this bill was identical to HB 530, as introduced by Reps. Blue, Carney, Brubaker, which is currently in Senate Commerce. HB 530 is currently in its third edition.]

CURRENT LAW: Each local exchange telephone company (LEC) is the carrier of last resort for the area in which it was certified to operate on July 1, 1995. The carrier of last resort (also known as the universal service provider) must provide basic local exchange service in this area.

S.L. 2005-85 modified this requirement by providing that when a competing telecommunications provider enters into an agreement to provide local telephone service to a subdivision or area, and the right of way or access to deliver phone service is not made available to other telecommunications providers, the LEC is relieved of its carrier of last resort obligations and the telecommunication service provider that entered into the agreement is considered the carrier of last resort. The LEC must notify the appropriate State agency that it is no longer the carrier of last resort.[1] The appropriate State agency retains the authority to re-designate the LEC as the carrier of last resort if the telecommunications provider that entered into the agreement is no longer willing or able to provide adequate services to the subdivision or area.

BILL ANALYSIS: SB 889 would allow carriers of last resort to meet their carrier of last resort obligations by using any available technology. The communications service provider would be able to use all technologies that are currently available to provide access to the local switched network, including traditional phone service, wireless service, and VoIP (Voice over Internet Protocol).

When a telecommunications provider has entered into an agreement which precludes the LEC from providing service in a subdivision or other area, the LEC is relieved of its carrier of last resort obligation. The LEC remains obligated to provide notice to the appropriate State agency that it is no longer the carrier of last resort.

The entity providing the local exchange service instead of the LEC is required to notify a purchaser of real property within the subdivision that it provides local exchange service instead of the LEC.

After approval by the appropriate State agency, a LEC may be relieved of its carrier of last resort obligation upon a showing that: (i) providing service in a subdivision or area would be inequitable or unduly burdensome, (ii) one or more alternative providers exist, and (iii) granting the waiver is in the public interest.

[1] The Utilities Commission is generally the State agency. However, the Rural Electrification Authority has jurisdiction over certain providers.

The appropriate State agency retains the authority to re-designate the LEC as the carrier of last resort if the telecommunications provider that entered into the agreement is no longer willing or able to provide adequate services to the subdivision or area.

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

S889-SMRL-50(CSRL-25) v1

**Heather Fennell, Committee Counsel to House Public Utilities, and Drupti Chauhan, Committee Counsel to House Judiciary II, significantly contributed to this summary.*

SENATE COMMERCE COMMITTEE
Wednesday, May 13, 2009 10:15 AM
Senate Floor, Legislative Building

MINUTES

The Senate Commerce Committee met at 10:15 a.m., Wednesday, May 13, 2009, in the Senate Chamber of the Legislative Building. Senator R.C. Soles presided.

S.B. 894 – UI/School Teacher Related Amendments

Senator Soles stated that the bill had been misreported the day before and was back before the committee so that it may be reported out correctly. Senator Goss and Senator Dorsett moved to allow discussion of the bill and its previously adopted amendment. The motion carried. Senator Soles explained the bill and its adopted amendment. Senator Dorsett moved to approve the bill as amended and report it out of committee as a committee substitute. The motion carried. A copy of the bill and the adopted amendment is attached.

The meeting adjourned at 10:18 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

S 1

SENATE BILL 894

Short Title:	UI/School Teacher Related Amendments.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Commerce.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAWS RELATING TO THE DEFINITION OF SUBSTITUTE TEACHER IN DETERMINING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS AND RELATING TO DISQUALIFICATION FOR BENEFITS DUE TO INABILITY TO OBTAIN A LICENSE OR CERTIFICATION NECESSARY FOR THE PERFORMANCE OF AN INDIVIDUAL'S EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(6)k. is amended by adding a new sub-subdivision to read:

"21. Service performed by a substitute teacher or other substitute employee for a public, charter, or private school unless the individual was employed as a full-time permanent substitute. For the purposes of this sub-subdivision only, an individual is employed as a full-time substitute when employed to work on an indefinite basis no less than 30 hours per week."

SECTION 2. G.S. 96-8(10)e. is repealed.

SECTION 3. G.S. 96-14(2b) reads as rewritten:

"(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~~ the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to ~~him,~~the individual, or ~~his~~ the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within his power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision."

SECTION 4. This act is effective when it becomes law and applies to claims filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE 5/12/09

S. B. No. 894 Amendment No. 1

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.)
)
Sen.) _____

1 moves to amend the bill on page 1, line 9
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "a new sub-subdivision"
4 and substituting the words "the following new
5 sub-subdivisions";
6
7 and on page 1, line 15, by deleting the word
8 "week." and substituting the following:
9 "week.
10 22. Performance of extra duties for a public,
11 charter or private school. Such extra
12 duties include coaching athletics, acting
13 as a choral director or such other similar
14 activities.";
15
16 and on page 1, 3, by adding after the word
17 "TEACHER" the words "AND OTHER SCHOOL-RELATED
18 POSITIONS".
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 13, 2009

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

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

S.B. **894** UI/School Teacher Related Amendments.

Draft Number:	15277
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE COMMERCE COMMITTEE
Tuesday, May 19, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 30, 2009, in Room 1027 of the Legislative Building. Twenty-one members of the committee were present. Senator R.C. Soles presided. John Yakel of Salemburg, Lindsay Stutts of Goldsboro, Tyler White of Clinton, Laura Page of Clinton, Nicholas Purvis of Middlesex, and Shaneice Mitchell of Colerain served as pages.

Brooks Brothers/Garland Shirt Company

Senator Soles introduced representatives from the company and thanked them for their presence in North Carolina. Dan Teel, Garland Shirt Factory Plant manager; Joe Dixon, vice president of production; and Laura Rowen, director of manufacturing were recognized for brief remarks. Senator Soles also recognized Pete Cowan, mayor of Burgaw, and Karen Brown, Correction Enterprises director. A copy of the Brooks Brothers Spring newsletter is attached.

S.B. 642 – Require Off-Road Vehicles to be Registered.

Senator Doug Berger was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS requires all-terrain vehicles and motorcycles that are used as off-road vehicles to be registered with the Division of Motor Vehicles. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 1073 – Amend Alarm Systems Licensing Act.

Senator Snow was recognized to explain the bill. Senator Rucho moved to adopt the PCS for discussion and the motion carried. The PCS amends the North Carolina Alarm Systems Licensing Act and authorizes the North Carolina Alarm Systems Licensing Board to establish a late registration fee. Charles McDarris, the Alarm Systems Licensing Board attorney was recognized to speak in favor of the bill. Laura Busse, a member of the NC Locksmith Licensing Board spoke in opposition to the bill saying it needed a technical change to prevent locksmiths from breaking the future law. Mr. McDarris promised to work with Ms. Busse to get the bill's language corrected. Senator Doug Berger moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 11:38 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: SB 700 - Dry-Cleaning Solvent Act Amends has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 19, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 642	Require Off-Road Vehicles to Be Registered.	Senator Berger
SB 935	Amend Marriage & Family Licensure Laws/Fees.	Senator Goss
SB 1073	Amend Alarm Systems Licensing Act.	Senator Snow

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 19, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 591	Plan for Statewide Motor Coach Permit.	Senator Swindell IV
SB 642	Require Off-Road Vehicles to Be Registered.	Senator Berger
SB 700	Dry-Cleaning Solvent Act Amends.	Senator Rand
SB 935	Amend Marriage & Family Licensure Laws/Fees.	Senator Goss
SB 1073	Amend Alarm Systems Licensing Act.	Senator Snow

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, May 19, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 642	Require Off-Road Vehicles to Be Registered.	Senator Berger
SB 1073	Amend Alarm Systems Licensing Act.	Senator Snow

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

May 19, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAN TEEL	BROOKS BROTHERS
JOE DIXON	BROOKS BROTHERS
Laura Rowen	Brooks Brothers
Pete Cobern	Town of Burgaw
Karen Brown	NC Correction Enterprises
Lori Jones	Atty. Raleigh
Henry Jones	Attorney Raleigh
Tom Vaughan	CFTF
Zach Mehrkam	Civitas

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 19, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	NCTFAA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Leslie Arnold	SOG-Daily Bulletin
D. McLeod	NCDACS
Ray Stanley	"
Kelli Kulcsa	NCLM
Chris Hollis	K&L Gates

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 19, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
L. Andrews	NCFB
P. Page	NCFB
Laura W. Bone	Bone & Associates, LLC
Ted Bone	Bone & Asso.
Drew Ball	Sierra Club
Johanna Reese	DOT
Joey Gardner	DMV License & Theft
Cady Thomas	NC Assn of REALTORS
Jessi Hayes	NC HBA
Lisa Martin	" "
Sarah Clapp	NCWRC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 19, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hayes	Civitas
Patrick Buffkin	NMMC
John Goodman	NC Chamber
Allison Waller	Charlotte Chamber
Andy Scholl	NC DOR
Joni Allen	Beginnings
Jeff Nixon	Civitas
Bruce Thompson	Parker Poe

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 642
PROPOSED COMMITTEE SUBSTITUTE S642-CSSUf-53 [v.1]

5/18/2009 3:10:17 PM

Short Title: Require Off-Road Vehicles to Be Registered. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ALL-TERRAIN VEHICLES AND MOTORCYCLES THAT ARE USED AS OFF-ROAD VEHICLES TO BE REGISTERED WITH THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-50 is amended by adding a new subsection to read:

"(a1) Except for vehicles exempted from registration under G.S. 20-51 or used primarily for agricultural purposes or by law enforcement, fire, rescue, and emergency medical service personnel in the performance of their duties, an all-terrain vehicle or motorcycle that meets all of the following criteria shall be registered with the Division in accordance with G.S. 20-53.1:

(1) The all-terrain vehicle or motorcycle is not otherwise required to be registered.

(2) The all-terrain vehicle or motorcycle was manufactured in the year 2005 or later.

(3) The all-terrain vehicle or motorcycle is intended for off-road operation."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-53.1. Registration of all-terrain vehicles and motorcycles for off-road use.**

(a) An all-terrain vehicle or motorcycle required to be registered under G.S. 20-50(a1) must be registered in the same manner as any other vehicle registered under this Chapter and in accordance with this section.

(b) An owner registering an all-terrain vehicle or motorcycle for off-road use must supply the following at the time of registration:

(1) The Product Identification Number or Vehicle Identification Number.

(2) A manufacturers certificate of origin or title, or an inspection and indemnity bond if a manufacturers certificate of origin or title is not available.

(c) The Division must issue an all-terrain vehicle or motorcycle being registered under this section a registration plate or sticker that is different in color or design so that law enforcement officers can easily recognize the registration plate or sticker and the fact that the vehicle upon which the plate or sticker is affixed must be operated off the roads, streets, and highways of this State.

(d) An all-terrain vehicle or motorcycle registered for off-road use is subject to the title and registration fees provided in G.S. 20-85 and G.S. 20-87.

(e) There is no requirement that all-terrain vehicle or motorcycle registered for off-road use have insurance on the vehicle or that the owner provide proof of financial responsibility prior to the vehicle being registered.

(f) The Division must collect any sales and use tax, and any other tax the Division is required to collect pursuant to Chapter 105 of the General Statutes, on an all-terrain vehicle or motorcycle being registered for off-road use. If the applicant paid the sales and use tax to a dealer in North Carolina, proof of payment to a dealer will be acceptable proof to register the vehicle. If the off-road vehicle was purchased outside of North Carolina, the Division shall collect the applicable sales and use tax and submit it to the Department of Revenue."

SECTION 3. G.S. 20-87 is amended by adding a new subdivision to read:

"**§ 20-87. Passenger vehicle registration fees.**

These fees shall be paid to the Division annually for the registration and licensing of passenger vehicles, according to the following classifications and schedules:

...

(13) Off-Road All-Terrain Vehicles and Motorcycles. – The base fee on an all-terrain vehicle or motorcycle registered for off-road use shall be fifteen dollars ($15.00) except that when an all-terrain vehicle or motorcycle is equipped with an additional device designed to transport persons or property, the base fee shall be twenty-two dollars ($22.00)."

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

SENATE BILL 642:
Require Off-Road Vehicles to Be Registered

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 19, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S642-CSSUf-53		

SUMMARY: ***Senate Bill 642 would require certain all-terrain vehicles (ATVs) and motorcycles used off-road and not currently registered to register and pay registration fees to the Division of Motor Vehicles.***

CURRENT LAW:

Part 3, Article 3, Chapter 20 pertains to the Registration and Certificates of Titles of Motor Vehicles.
G.S. 20-50 requires vehicles intended to be operated on a highway of this State to be registered with the Division of Motor Vehicles.
G.S. 20-87 establishes the fees for registration and licensing of vehicles.

BILL ANALYSIS:

Section 1 would amend G.S. 20-50 to require all-terrain vehicles (ATV) and motorcycles, except for those used primarily for agricultural purposes or those used by law enforcement, fire, rescue, and emergency medical personnel, to register with the Division of Motor Vehicles if the ATV or motorcycle meets all of the following criteria:

- It is not otherwise required to be registered.
- It was manufactured in the year 2005 or later.
- It is intended for off-road operation.

Section 2 would add a new section to Chapter 20, G.S. 20-53.1, pertaining to the registration of ATVs and motorcycles used off-road to require the following:

- To be registered in the same manner as other vehicles under Chapter 20.
- To have a Product Identification Number, or Vehicle Identification Number, to be supplied at the time of registration.
- To have a manufacturer certificate of origin or title to be registered, or an inspection and indemnity bond if a manufacturer certificate of origin or title is not available.
- To be issued a registration plate or sticker that is different in color or design so that it can be readily recognized by law enforcement officers and identified in an off-road setting and to be subject to title and registration fees provided in G.S. 20-85 and G.S. 20-87.

An owner of an ATV or motorcycle registered for off-road use would not be required to have insurance or to provide proof of financial responsibility prior to registration.

This section also specifies that when an ATV or motorcycle is registered for off-road use, the Division would be required to collect sales and use taxes, or other taxes the Division is required to collect. If the applicant paid the sales and use tax to a dealer in North Carolina when purchasing the vehicle, proof of payment will be acceptable proof. If the vehicle was purchased outside North Carolina, the Division would be required to collect applicable sales and use tax and submit it to the Department of Revenue.

- **Section 3** would amend G.S. 20-87 regarding motor vehicle registration and licensing fees to require a base fee of $15.00 on an ATV or motorcycle registered for off-road use, or $22.00 when the ATV or motorcycle is equipped with an additional device to transport persons or property.

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

Theresa Matula, staff to House State Government/State Personnel, substantially contributed to this summary.

S642-SMSU-89(CSSUf-53) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1073
PROPOSED COMMITTEE SUBSTITUTE S1073-CSROf-47 [v.1]

5/18/2009 7:25:09 PM

Short Title: Amend Alarm Systems Licensing Act. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA ALARM SYSTEMS LICENSING ACT AND AUTHORIZING THE NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD TO ESTABLISH A LATE REGISTRATION FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74D-2 reads as rewritten:

"**§ 74D-2. Licenses required.**

(a) No person, firm, association, corporation, or department or division of a firm, association or corporation, shall engage in or hold itself out as engaging in an alarm systems business without first being licensed in accordance with this Chapter. For purposes of this Chapter an "alarm systems business" is defined as any person, firm, association or corporation ~~which~~ that does any of the following:

(1) ~~sells~~ Sells or attempts to sell an alarm system device by engaging in a personal solicitation at a residence or business ~~when combined with personal inspection of the interior of the residence or business~~ to ~~advise~~ advise, design, or consult on specific types and specific locations of alarm system ~~devices,~~devices.

(2) ~~installs,~~Installs, services, ~~monitors~~ monitors, or responds to electrical, electronic or mechanical alarm signal devices, burglar alarms, ~~television cameras or still cameras~~monitored or recorded access control, or cameras used to detect burglary, breaking or entering, intrusion, shoplifting, pilferage, ~~or theft.~~theft, or other unauthorized or illegal activity.

A department or division of a firm, association or corporation may be separately licensed under this Chapter if the distinct department or division, as opposed to the firm, association or corporation as a whole, engages in an alarm systems business. Such a department or division shall ensure strict confidentiality of private security information, and the private security information of the department or division must, at a minimum, be physically separated from other premises of the firm, association or corporation.

(b) Repealed by Session Laws 1989, c. 730, s. 1.

(c) (1) No business entity shall do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided, however, that this approval shall not be given unless the business

entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice or demand required by or permitted by law to be served upon the business entity by the Alarm Systems Licensing Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a business entity in any other manner or hereafter permitted by law.

(2) For the purposes of this Chapter, a "qualifying agent" means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the board.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the board in writing within 10 working days. The business entity must obtain a substitute qualifying agent within ~~30~~ 90 days after the original qualifying agent ceases to serve as qualifying ~~agent unless the board, in its discretion, and upon written request of the business entity, extends this period for good cause for a period of time not to exceed three months.~~agent.

(4) The license certificate shall list the name of ~~at least one designated~~the qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without the prior approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Alarm Systems Licensing Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Alarm Systems Licensing Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~ a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(d) Upon receipt of an application, the board shall cause a background investigation to be made during which the applicant shall be required to show that he meets all the following requirements and qualifications prerequisite to obtaining a license:

(1) That the applicant is at least 18 years of age;

(2) That the applicant is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury;

(3) That the applicant has the necessary training, qualifications and experience to be licensed.

(e) The ~~board~~ Board may require the applicant to demonstrate ~~his~~ the applicant's qualifications by ~~oral or written examination, or both.~~examination.

(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

SECTION 2. G.S. 74D-3(1) reads as rewritten:

"The provisions of this Chapter shall not apply to:

(1) A person, firm, association or corporation which sells or manufactures alarm systems, unless such persons, firm, association or corporation makes personal ~~inspections of interiors of residences or businesses~~ solicitations at a residence or business to ~~advise~~ advise, design, or consult on specific types and specific locations of alarm system devices, installs, services, monitors or responds to alarm systems at or from a protected premises or a premises to be protected and thereby obtains knowledge of specific application or location of the alarm ~~system;~~system. A person licensed under this Chapter may hire a consultant to troubleshoot a location or installation for a period of time not to exceed 48 hours in a one-month period if the licensee submits a report to the Board within 30 days from the date of the consultation designating the consultant as a temporary consultant;

...."

SECTION 3. G.S. 74D-5.2 reads as rewritten:

"**§ 74D-5.2. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1. However, the report may be released to the licensee after the investigation is complete, but before the report is presented to the Board."

SECTION 4. G.S. 74D-7 reads as rewritten:

"**§ 74D-7. Form of license; term; assignability; renewal; posting; branch offices; fees.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee;
(2) The name under which the licensee is to operate; and
(3) The number and expiration date of the license.

(b) The license shall be issued for a term of two years. Each license must be renewed before expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this Chapter is not assignable.

(c) No licensee shall engage in any business regulated by this Chapter under a name other than the licensee name or names which appear on the certificate issued by the Board.

(d) Any branch office of an alarm systems business shall obtain a branch office certificate. A separate certificate stating the location and licensed qualifying agent shall be posted at all times in a conspicuous place in each branch office. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices. All licensees of a branch office shall notify the Board in ~~writing, within 10 working days after~~writing before the establishment, closing, or changing of the location of any branch office. A licensed qualifying agent may be responsible for more than one branch office of an alarm systems business with the prior approval of the Board. Temporary approval may be granted by the Director, upon application of the qualifying agent, for a period of time not to exceed 10 working days after the adjournment of the next regularly scheduled meeting of the Board unless the Board determines that the application should be denied.

(e) The Board may charge fees as follows:
(1) A nonrefundable initial license application fee in an amount not to exceed one hundred fifty dollars ($150.00).
(2) A new or renewal license fee in an amount not to exceed five hundred dollars ($500.00).
(3) A late license renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the license.
(4) A new or renewal registration fee in an amount not to exceed fifty dollars ($50.00) plus any fees charged to the board for background checks by the State Bureau of Investigation.
(5) A fee for reregistration of an employee who changes employment to another licensee, not to exceed ten dollars ($10.00).
(6) A branch office certificate fee not to exceed one hundred fifty dollars ($150.00).
(7) A fee not to exceed fifty dollars ($50.00) for each reconsideration of a license or registration permit that has been filed or returned to the applicant for correctable errors.
(8) A late registration fee, to be paid in addition to the registration renewal fee, not to exceed twenty dollars ($20.00) for an application submitted no more than 30 days after the expiration of the registration permit. A registration application submitted more than 30 days after the registration has expired shall be registered as a new applicant.

All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering this Chapter."

SECTION 5. G.S. 74D-8(a) reads as rewritten:

"(a) (1) All licensees of an alarm systems business shall register with the Board within ~~20~~30 days after the employment begins, all of the licensee's employees that are within the State, unless in the discretion of the Director, the time period is extended for good cause. To register an employee, a licensee shall submit to the Board as to the employee: set(s) of classifiable

fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records ~~obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.~~as deemed appropriate by the Board.

(2) Except during the period allowed for registration in subdivision (a)(1) of this section, no alarm systems business may employ any employee unless the employee's registration has been approved by the Board as set forth in this section."

SECTION 6. G.S. 74D-10(a) reads as rewritten:

"(a) The Board may, after notice and an opportunity for hearing, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

(1) Made any false statement or given any false information in connection with any application for a license or registration, or for the renewal or reinstatement of a license or ~~registration;~~registration.

(2) Violated any provision of this ~~Chapter;~~Chapter.

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this ~~Chapter;~~Chapter.

(4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous ~~weapon;~~weapon.

(5) Failed to correct business practices or procedures that have resulted in a prior reprimand by the ~~Board;~~Board.

(6) Impersonated or permitted or aided and abetted any other person to impersonate a law-enforcement officer of the United States, this State, or any of its political ~~subdivisions;~~subdivisions.

(7) Engaged in or permitted any employee to engage in any alarm systems business when not lawfully in possession of a valid license issued under the provisions of this ~~Chapter;~~Chapter.

(8) Committed an unlawful breaking or entering, assault, battery, or ~~kidnapping;~~kidnapping.

(9) Committed any other act which is a ground for the denial of an application for a license or registration under this ~~Chapter;~~Chapter.

(10) ~~Failure~~ Failed to maintain the certificate of liability required by this ~~Chapter;~~Chapter.

(11) Any judgment of incompetency by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or commitment to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3(21), by a court having jurisdiction under Article 5 of Chapter 122C of the General ~~Statutes;~~Statutes.

(12) Accepted payment in advance for services not performed within a reasonable time ~~period;~~period.

(13) A lack of temperate habits or ~~of~~ good moral character. The acts that are prima facie evidence of lack of temperate habits or ~~of~~ good moral character under G.S. 74D-6(3) are prima facie evidence of the same under this subdivision.

(14) Been previously denied a license or registration under this Chapter or previously had a license or registration revoked for cause.

(15) Engaged in the alarm systems profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(16) Advertised or solicited business using a name other than that in which a licensed was issued.

(17) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(18) Failed to properly make any disclosure or provide documents or information required by this Chapter or by the Board.

(19) Engaged in conduct that constitutes dereliction of duty or otherwise deceives, defrauds, or harms the public in the course of professional activities or services.

(20) Demonstrated a lack of financial responsibility."

SECTION 7. G.S. 74D-11 is amended by adding a new subsection to read:

"(f) The sale, installation, or service of an alarm system by an unlicensed or unregistered person shall constitute a threat to the public safety, and any contract for the sale, installation, or service of an alarm system shall be deemed void and unenforceable."

SECTION 8. Article 1 of Chapter 74D of the General Statutes is amended by adding the following new section to read:

"**§ 74D-14. Proof of licensure to maintain or commence action.**

An alarm systems business may not maintain any action in any court of the State for the collection of compensation for performing an act for which a license or registration is required by this Chapter without alleging and proving that the alarm systems business is appropriately licensed and the employee or agent of the alarm systems business is appropriately registered upon entering into a contract with the consumer. An alarm system installation, maintenance, or monitoring contract entered into with a consumer shall be void if the consumer confirms through records maintained by the Board that the alarm systems business is not properly licensed or the consumer establishes through records maintained by the Board that the person enticing the consumer to enter into the contract is not properly registered by the Board. The sale, installation, or service of an alarm system by an unlicensed or unregistered employee shall be deemed an unfair and deceptive trade practice and shall be actionable under Chapter 75 of the General Statutes."

SECTION 9. The following title under Article 2 of Chapter 74D of the General Statutes reads as rewritten:

"Alarm Systems ~~Recovery~~ Education Fund."

SECTION 10. G.S. 74D-30 reads as rewritten:

"**§ 74D-30. Alarm Systems ~~Recovery~~ Education Fund created; payment to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Alarm Systems ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) On July 1, 1985, the Board shall charge every licensee on that date a fee of fifty dollars ($50.00);

(2) The Board shall charge each new applicant for a license fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license on July 1, 1985; and

(3) The Board is authorized to charge each licensee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from such investments shall be deposited to the credit of the Fund.~~law. The Board in its discretion, may use ~~any and all of the proceeds from such investments~~the Fund for any of the following purposes:

(1) To advance education and research in the alarm systems field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the industry;

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees, and

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the alarm systems field in North Carolina."

SECTION 11. G.S. 74D-31, 74D-32, and 74D-33 are repealed.

SECTION 12. This act becomes effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date.

SENATE BILL 1073:
Amend Alarm Systems Licensing Act

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 18, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S1073-CSROf-47		

SUMMARY: ***Senate Bill 1073 makes various amendments to the Alarm Systems Licensing Act, including authorizing a late registration fee and changing the Alarm Systems Recovery Fund to the Alarm Systems Education Fund.***

The Proposed Committee Substitute makes a conforming change and changes the effective date.

CURRENT LAW:

The Alarm Systems Licensing Act governs the licensing and registration of all persons engaged in the alarm systems business. The Board examines applicants, issues and renews licenses and registrations, disciplines licensees and registrants and is endowed with such other powers as are necessary to implement the Act. The Board is housed within the Department of Justice and staffed by Department employees. The Attorney General is and ex officio member of the Board and is authorized to appoint the Director. Any person who knowingly violates the Act or a rule of the Board is guilty of a Class 1 misdemeanor. In addition, the Board is authorized to assess a civil penalty of up to $2,000.00 against a licensee or registrant for violation of the Act, in lieu of revoking or suspending the license or registration.

BILL ANALYSIS: Senate Bill 1073 makes several changes to the Alarm Systems Licensing Act, including:

Section 1. - Amends the definition of the term "alarm system business" by removing the provision that a person selling alarm system devices must make a personal inspection of the interior of the residence or business to advise, design, or consult with the customer;

This section extends from 30 to 90 days the time within which the business must identify a new qualifying agent when the original qualifying agent ceases to serve; and

This section also clarifies that the Board may request a criminal record check from the Department of Justice for a renewal applicant based on the applicant's fingerprints in accordance with policy adopted by the Board.

Section 2. - Amends the section of the Act relating to exemptions. This section authorizes a licensee to hire an unlicensed consultant to troubleshoot in a specific location for a period of up to 48 hours within a one-month period. The licensee must submit a report on this activity to the Board within 30 days of the consultation.

Section 3. - Clarifies that an investigation of a complaint under this Act is deemed confidential and not subject to the Public Records Law. Once the investigation is complete the report can be released to the licensee before being presented to the Board.

Section 4. - Provides that a licensee must notify the Board before making changes to a branch office.

This section also authorizes the Board to charge a late registration fee of up to $20.00 for an application submitted no more than 30 days after the expiration of the registration. After 30 days, the applicant must be registered as a new applicant.

Section 5. - Extends from 20 to 30 days the time within which a licensee must register a new employee. In order to register the employee, the licensee must submit (i) the applicant's fingerprints, (ii) a recent color photograph of the applicant, (iii) and statements of any criminal records deemed appropriate by the Board.

Section 6. - Expands the list of activities for which the Board may take disciplinary action to include:

- Having previously been denied or had revoked a license or registration under the Act.
- Engaging in the alarm system business under a different name than appears on the license.
- Advertising or soliciting business under a different name than appears on the license.
- Failing or refusing to cooperate with the Board during an investigation of a complaint.
- Failing to disclose information or provide documents required by the Act or the Board.
- Engaging in conduct that constitutes a dereliction of duty or deceives, defrauds, or harms the public in the course of providing professional services.
- Demonstrating a lack of financial responsibility.

Section 7. - Amends the provision relating to enforcement of the Act by adding a provision that a contract for sale, installation, or service of an alarm system entered into by an unlicensed or unregistered person is a threat to public safety, and the contract shall be deemed void and unenforceable.

Section 8. - Adds a new section to the law requiring that a licensee must be able to prove that the business' license is valid and that the employee or agent is properly registered in order to commence or maintain an action to collect compensation. This provision also makes it an unfair and deceptive trade practice to engage in the alarm systems business without a license or registration.

Section 9. - Amends the title of Article 2A to the "Alarm Systems Education Fund".

Section 10. - Amends Article 2 of the Act to change the Alarm Systems Recovery Fund to the Alarm Systems Education Fund. Since 1985, the Board has administered a fund for the payment of claims by a person who has suffered monetary loss as a result of the actions of a licensee. The Board was authorized to charge licensees a $50.00 fee to maintain the fund at the level of at least $100,000. This section changes the purpose of the fund to provide exclusively for the education of licensees and registrants and lowers the maintenance level from $100,000.00 to $25,000.

Section 11. - Repeals sections of Article 2 which define the procedure for the Board to determine claims on the fund and to make payments where appropriate.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date.

S1073-SMRO-100(CSROf-47) v1

SENATE COMMERCE COMMITTEE
Thursday, May 28, 2009 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on May 28, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles presided. Lauren Broadwell of Wendell, Rita Kopp of Selma, Sarah Creech of Wendell, Jean Turlington of Clinton, T. Brack of Gastonia, Jake Welch of Gastonia, Drew Brack of Gastonia and Darren Evans of Manteo served as pages.

H.B. 439 – State Health Plan/Taxpayer Recovery.

Representative Folwell was recognized to explain the bill which reduces the financial loss to counties and cities for unreimbursed county or city ambulance services provided to State Health Plan members by requiring the State Health Plan to make payments for county or city ambulance services directly or co-payable to the county or city ambulance service provider. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill, the fiscal note and the summary is attached.

S.B. 375 – Insurance/Cover Hearing Aids.

Senator Purcell was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS requires health benefit plans and the State Health Plan to cover hearing aids and replacement hearing aids. Tate Russell (9 years old), Ani Khachadourian (6 years old), Collin Tastet (8 years old) and Rachael Skergan (6 years old) were all recognized to explain their hearing aids and speak in favor of the bill. Dr. Joni Alberg, Beginning Executive Director, was recognized to speak in favor of the bill. Senator Purcell and Senator Berger of Franklin moved for a favorable report and the motion carried. A copy of the PCS, the summary and the fiscal note is attached.

H.B. 135 – Broadband Service Providers.

Representative Faison was recognized to explain the bill which permits certain broadband service providers that provide voice grade communication services within a defined service territory or franchise area to offer such voice grade service as an incident to broadband service in areas contiguous to the providers' service territory or franchise area. Senator Hoyle and Senator Foriest moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1027 – Prepaid Wireless Telephone Service/Sunset.

Representative Brubaker was recognized to explain the bill which extends the sunset on the collection of service charges for prepaid wireless telephone service. Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1180 – Consumer Choice and Investment Act of 2009.

Representative Tolson was recognized to explain the bill. Senator Berger of Rockingham moved to adopt the PCS for discussion and the motion carried. The PCS establishes the Consumer Choice and Investment Act of 2009. Senator Berger of Franklin offered an amendment that expands the purposes for which 911 funds may be used by public safety answering points. Steve Rose, a staff attorney with the Research Division, was recognized to explain the amendment and answer questions. The bill sponsors (Representative Tolson, Representative Tillis and Representative Brubaker) were recognized to speak in opposition to the amendment. Richard Taylor, Director of the 911 Board, was recognized to answer questions and speak in opposition to the amendment. Rebecca Troutman, NC County Commissioners Association liaison, was recognized to speak in favor of the amendment. Senator Berger moved to adopt the amendment and the motion failed. Senator Rand moved to favorably report the PCS with a referral to the Senate Finance Committee and the motion carried. A copy of the PCS, the summary and the amendment is attached.

S.B. 700 – Dry-Cleaning Solvent Act.

Senator Rand was recognized to explain the bill and moved to adopt the PCS for discussion. The motion carried. The PCS (1) extends sunset dates applicable to the Dry-Cleaning Solvent Cleanup Act, the Dry-Cleaning Solvent Cleanup Fund, and the Dry-Cleaning Solvent Cleanup Tax; (2) allows the use of State and local land-use controls and deed notices in lieu of land-use restrictions for properties in the area of contaminated dry-cleaning sites, not including properties on which a dry-cleaning facility is or was located which is the source of site's contamination; (3) modifies notice and comment requirements associated with a notice of intent to remediate; and (4) removes the limitation on disbursement of monies from the dry-cleaning solvent cleanup fund for costs incurred to address dry-cleaning solvent contamination on State-owned property. Jennifer McGinnis, a staff attorney with the Research Division, was recognized to answer questions. Senator Rand moved to favorably report the PCS with a referral to the Senate Finance Committee and the motion carried. A copy of the PCS and the summary is attached.

S.B. 935 – Amend Marriage & Family Licensure Laws/Fees.

Senator Goss was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS amends the Marriage and Family Therapy Licensure Laws and authorizes the North Carolina Marriage and Family Therapy Licensure Board to increase fees. Wanda Nicholson, the NC Marriage and Family Therapy Licensure Board Executive Director, was recognized to answer questions. Senator Hoyle and Senator Stein moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 9:55 AM.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Thursday, May 28, 2009, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 135	Broadband Service Providers.	Rep. Faison Rep. Tolson Rep. Haire Rep. Tillis
HB 439	State Health Plan/Taxpayer Recovery Act.	Rep. England Rep. Folwell Rep. Hall Rep. Hurley
HB 1027	Prepaid Wireless Telephone Service/Sunset.	Rep. Brubaker
HB 1180	Consumer Choice and Investment Act of 2009.	Rep. Brubaker Rep. Tolson Rep. Holliman Rep. Tillis
HB 1210	Facilitate Access to Emergency Supplies.	Rep. Cole
SB 375	Insurance/Cover Hearing Aids.	Sen. Purcell
SB 700	Dry-Cleaning Solvent Act Amends.	Sen. Rand
SB 935	Amend Marriage & Family Licensure Laws/Fees.	Sen. Goss

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 28, 2009

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

FAVORABLE

H.B.(CS #1) **135**	Broadband Service Providers.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **439**	State Health Plan/Taxpayer Recovery Act.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **1027**	Prepaid Wireless Telephone Service/Sunset.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

H135 will be handled by Senator Snow on the Senate floor.

H439 will be handled by Senator Brunstetter on the Senate floor.

H1027 will be handled by ~~Senator R. C. Soles~~ Apodaca on the Senate floor.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, June 01, 2009

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

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

S.B. **375** Insurance/Cover Hearing Aids.

Draft Number:	15293
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	No

S.B. **700** Dry-Cleaning Solvent Act Amends.

Draft Number:	55412
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

S.B. **935** Amend Marriage & Family Licensure Laws/Fees.

Draft Number:	15291
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1180** Consumer Choice and Investment Act of 2009.

Draft Number:	80453
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Peter Caracciolo	NCGA STAFF
Elizabeth Dalton	NCRMA
Cameron Hanby	Electric Cities of NC
Craig Thayer	NFIB
Seth Palmer	Rep. Hallman
[illegible]	AT&T
Wendy Kelly	SZDC/Dickstein
Amy Schilder	MWC
Steve Brewer	EMBARQ
[illegible]	Colonial Pipeline Company
David Ardley	PCPNC
L. Andrews	NCRB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ginny Upchurch	NC Dept of Revenue
Andy Sasol	NCDOR
Daniel Long	NCUC
Lemuel Hinton	NCUC Staff
Rob Smith	AT&T
Bill Vaught	AT&T
David Barnes	Poyner Spruill
Jack Cozort	Womble
Melissa Trowbridge	NCACC
Jack Wells	The Alliance of AT&T Telcos

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Renee Wimbish	Rep Folwell
Arthur Tarlet	Parent of child w/ hearing loss
Collin Tarlet	child w/ hearing loss
Sharon Khachadourian and Natchie	Parent & Hearing Impaired child 107 Mintwood Ct Cary NC
Ward Russell	Parent of hearing impaired grandchild 2207 oxford Rd Raleigh NC
David Skergan	Parent of hearing impaired child 5612 Big Sandy Drive Raleigh NC 27606
Fred Mills	MCCI PO Box 6171 Rocky Mount NC 27628
Jenni Mayfield	Parent of Hearing Impaired child 613 Adams Point Dr Garner NC 27529
Octavia Raines	CFDF (Citizens For Digital Future)
Eugene Weeks	Wake County Voter education Coalition
Patrick Buffkin	NMHC
Ed Finley	NLHC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Alisa Oliver	5137 Dove Forest Ln. Apex, NC 27539
[illegible]	[illegible]
Kathy Hartkopf	Freedom Works
Wanda Nicholson	NC Marriage & Family Therapy Licensure Board
Jack Butler	NC DENR-DWM
John Powers	NC DENR-DWM
Mark Flemry	BCBSNC
Katrina English	NCCN
Dana Sykes	Smith Anderson
Marty Bocock	EMBARQ

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Danny Shaffer	2910 Skye Dr Fayetteville NC 28303
Dwight Allen	Allen Law Offices
Richard Taylor	NC 911 Board
Mark Mason	AT&T
Rachel Skergan	5612 Big Sandy Drive Raleigh, NC 27616
Natalie Skergan	5612 Big Sandy Drive Raleigh, NC, 27616
Molly Russell	2207 Oxford Rd. Raleigh, NC 27608
Tatum Russell	2207 Oxford Rd. Raleigh, NC 27608
Henry Jones	Attorney—Raleigh
Christopher Edwards	A Clearer World PO Box 6535 High Point, NC 27262
Shawnice Meador	1230 N. Blount St Raleigh, NC 27604

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

May 26, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	NCCTA
Marcy Tuttle	Brooks Pierce
Bill Phillips	TWC
Tommy Robinson	TWC
Sten Pace	Verizon
Alicia Davis	MWC
Carlos E. Sanchez	AT&T
Carol Durrell	State Health Plan
Tom Giovanetti	Institute for Policy Innovation, Dallas TX
Jason Miller	e-NC
Amy Frederick	60 Plus Association

HOUSE BILL 439

Short Title:	State Health Plan/Taxpayer Recovery Act.	(Public)
Sponsors:	Representatives Folwell, England, Hurley, Hall (Primary Sponsors); Blackwood, Bryant, Cleveland, Current, Dockham, Glazier, Gulley, Harrison, Langdon, Luebke, Samuelson, Starnes, and Weiss.	
Referred to:	Insurance, if favorable, Appropriations.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE FINANCIAL LOSS TO COUNTIES AND CITIES FOR UNREIMBURSED COUNTY OR CITY AMBULANCE SERVICES PROVIDED TO STATE HEALTH PLAN MEMBERS BY REQUIRING THE STATE HEALTH PLAN TO MAKE PAYMENTS FOR COUNTY OR CITY AMBULANCE SERVICES DIRECTLY OR CO-PAYABLE TO THE COUNTY OR CITY AMBULANCE SERVICE PROVIDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-43 is amended by adding the following new subsection to read:

"(c) Allowable payments for services provided by a county or city ambulance service shall be paid directly or shall be co-payable to the county or city ambulance service provider. As used in this subsection, 'county or city ambulance service' means ambulance services provided by a county or county-franchised ambulance service supplemented by county funds, or a municipally owned and operated ambulance service or by an ambulance service supplemented by municipal funds."

SECTION 2. This act becomes effective July 1, 2009, and applies to county or city ambulance services provided on and after that date.

HOUSE BILL 439:
State Health Plan/Taxpayer Recovery Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 27, 2009
Introduced by:	Reps. Folwell, England, Hurley, Hall	**Prepared by:**	Tim Hovis*
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 439 would require the State Health Plan to pay coverage benefits for county or city ambulance services directly to the provider or make the payments copayable to the provider.

CURRENT LAW: Currently, the State Health Plan pays coverage benefits for in-network city or county ambulance services directly to the provider, but coverage benefits for out-of-network county or city ambulance services are paid to the subscriber only.

BILL ANALYSIS: House Bill 439 would require the State Health Plan to pay benefits directly to the provider, or make the payment co-payable to the provider, for services provided by an ambulance service owned or franchised by a county or supplemented with county funds, or owned and operated by a municipality or supplemented by municipal funds.

EFFECTIVE DATE: This act becomes effective July 1, 2009, and would apply to county or city ambulance services provided on and after that date.

*This summary was substantially contributed to by Bill Patterson, Staff Attorney.

H439-SMRG-54(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: House Bill 439 (First Edition)

SHORT TITLE: State Health Plan/Taxpayer Recovery Act.

SPONSOR(S): Representatives England, Folwell, Hurley, and Hall

SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: The bill requires reimbursement payments for city or county ambulance services to be paid by the Plan directly to the city or county ambulance service provider, or made co-payable to the provider and plan member.

EFFECTIVE DATE: July 1, 2009, and applies to county or city ambulance services provided on and after that date.

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for Teachers and State Employees, estimates that the bill will have no financial impact on medical claims, but will have administrative costs of approximately $43,000 to $76,000 to implement the bill's requirements assuming ambulance services are paid by direct method.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, estimates that the bill will have no financial impact on the Plan's medical claims payments. Based on the Plan's staff comments, administrative costs to implement the bill's provisions of approximately $43,000 to $76,000 assuming ambulance services are paid by direct method.

ASSUMPTIONS AND METHODOLOGY: The actuarial analyses used by each respective consulting actuary are on file with the Fiscal Research Division. Copies of each respective consulting actuary's analysis, including assumptions, are also attached to the original copy of this Legislative Actuarial note.

The estimate of no impact to the Plan's medical costs is based on the assumption that the Plan will maintain its current percentage number of in-network ambulance service providers relative to the number of out-of-network ambulance providers. This assumption is based on the application of the bill being limited to ambulance services reimbursed by the Plan only, and not those reimbursed by the total commercial provider network the Plan participates in through its Claims Processing Contractor (CPC).

Data to estimate potential savings from alleged over utilization of services by Plan members who use out-of-network ambulance providers excessively was not available. In discussions with several county emergency medical service providers, whom currently do not contract with the CPC, there were several anecdotal examples of individuals utilizing ambulance services excessively and in turn not reimbursing the county ambulance service provider once the CPC made payment to the individual. None of the anecdotal examples given could be attributed to services paid for by the Plan on behalf of a plan member, but were related to the CPC's provider network through which the Plan participates.

Summary Information and Data about the Plan

The Plan administers health benefit coverage for active employees from employing units of State agencies and departments, universities, local public schools, and local community colleges. Eligible retired employees of authorized employing units may also access health benefit coverage under the Plan. Eligible dependents of active and retired employees are authorized to participate in the Plan provided they meet certain requirements. Employees and retired employees of selected local governments may also participate in the Plan under certain conditions. Members of fire, rescue squads, and the National Guard may also obtain coverage under the Plan provided they meet certain eligibility criteria.

As of July 1, 2008, the State finances the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts are derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage are paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.6 billion for FY 2008-09. The Plan's PPO benefit design includes three alternative benefit levels offered to plan members. The three alternative benefit levels include the following:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums;

2) The "Standard" 80/20 plan; and

3) The "Plus" 90/10 plan with enhanced benefits via lower out-of pocket requirements as compared to the other PPO plan alternatives offered.

Employees and retired employees electing coverage under the Plus alternative must make a partially contributory premium contribution for their own coverage. The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under all plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.1 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss is projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses are expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year. It is currently estimated by the Plan's Executive Administrator that the Plan will not be able to pay claims on a timely basis by March 31, 2009.

Consequently, the reforecast of Plan finances now indicates that the Plan will require up to $300 million in additional resources to operate for the balance of the 2008-09 fiscal year. This amount represents the estimated funds necessary to pay claims and administrative expenses through June 30, 2009, plus funding a minimum stabilization reserve equal to 7.5% of projected claims, and assuming a future premium rate increase effective October 1, 2009.

Other Information

Additional assumptions include Medicare benefit "carve-outs," cost containment strategies including prior approval for certain medical services, utilization of the "Blue Options" provider network, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection, and other authorized actions by the Executive Administrator and Board of Trustees to manage the Plan to maintain and improve the Plan's operation and financial condition where possible. Claim cost trends are expected to increase at a rate of 9% annually according to the Plan's consulting actuary. Investment earnings are based upon a 4.5% return on available cash balances.

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	**35,254**	**533,204**	**98,351**	**666,809**	**100%**
Percent of Total	**5.3%**	**80.0%**	**14.7%**	**100.0%**	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	**13,481**	**401,253**	**66,319**	**481,053**

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Enrollment Data Continued

III. Enrollment by Sex	Basic	Standard	Plus	Total
Female	18,837	334,917	61,752	415,506
Male	16,417	198,287	36,599	251,303
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Sex	Basic	Standard	Plus	Total
Female	53.4%	62.8%	62.8%	62.3%
Male	46.6%	37.2%	37.2%	37.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

IV. Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	17,390	136,277	27,211	180,878
30 to 44	8,125	107,375	17,315	132,815
45 to 54	5,164	94,548	18,277	117,989
55 to 64	3,195	102,901	23,452	129,548
65 & Over	1,380	92,103	12,096	105,579
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	49.3%	25.6%	27.7%	27.1%
30 to 44	23.0%	20.1%	17.6%	19.9%
45 to 54	14.6%	17.7%	18.6%	17.7%
55 to 64	9.1%	19.3%	23.8%	19.4%
65 & Over	3.9%	17.3%	12.3%	15.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

V. Retiree Enrollment by Category	Employee	Dependents	Total
Non-Medicare Eligible	49,534	12,080	61,614
Medicare Eligible	97,240	7,448	104,688
Total	**146,774**	**19,528**	**166,302**

Percent by Category (Retiree)	Employee	Dependents	Total
Non-Medicare Eligible	33.7%	61.9%	37.0%
Medicare Eligible	66.3%	38.1%	63.0%
Total	**100.0%**	**100.0%**	**100.0%**

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 439: An Act to Require the State Health Plan to Make Payments for County of City Ambulance Services Directly or Co-Payable to the Provider", April 16, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "House Bill 439 State Health Plan/Taxpayer Recovery Act", April 16, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: April 21, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

HOUSE BILL 439

STATE HEALTH PLAN / TAXPAYER RECOVERY ACT

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

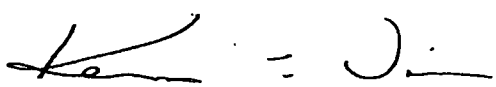
April 2009

ACTUARIAL STATEMENT

The North Carolina State Health Plan for Teachers and State Employees has requested that Aon Consulting prepare an Actuarial Note in response to House Bill 439 entitled "An Act To Reduce The Financial Loss To Counties And Cities For Unreimbursed County Or City Ambulance Services Provided To State Health Plan Members By Requiring The State Health Plan To Make Payments For County Or City Ambulance Services Directly Or Co-Payable To The County Or City Ambulance Service Provider."

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.



April 16, 2009

Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

Date



April 16, 2009

Kirsten R. Schatten, A.S.A., M.A.A.A.
Assistant Vice President

Date

STATE HEALTH PLAN / TAXPAYER RECOVERY ACT

PLAN CHANGES

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-43 is amended by adding the following new subsection to read:

"(c) Allowable payments for services provided by a county or city ambulance service shall be paid directly or shall be co-payable to the county or city ambulance service provider. As used in this subsection, 'county or city ambulance service' means ambulance services provided by a county or county-franchised ambulance service supplemented by county funds, or a municipally owned and operated ambulance service or by an ambulance service supplemented by municipal funds."

SECTION 2. This act becomes effective July 1, 2009, and applies to county or city ambulance services provided on and after that date.

PROJECTED COSTS

	Based on Midpoint* Increase (in millions)		
Plan Design Change	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Pay non-participating county/city ambulance services directly	$.04-$.08		$.04-$.08

* Based on total projected expenses of $2,687,502,073 and $2,919,507,795 for the 2010 and 2011 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- We expect no financial impact to medical costs based on county/city ambulance services receiving payment directly or through co-payable checks. However, if fraud exists based on the current payment structure, medical costs may be slightly reduced through this plan design change.

- The implementation cost for this bill is projected to be between $43,000 and $76,000 based on paying ambulance services directly. The implementation cost for the copayable option is expected to be more costly.

HARTMAN & ASSOCIATES, LLC

ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

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Phone: (336) 731-4038
Fax: (336) 731-2583

668 Link Road
Lexington, NC 27295

April 16, 2009

Mr. Mark Trogdon
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 439: An Act to Require the State Health Plan to Make Payments for County or City Ambulance Services Directly or Co-Payable to the Provider

Dear Mr. Trogdon:

This bill adds a new section to G.S. 135-43 to provide that the North Carolina State Health Plan for Teachers and State Employees (the "Plan") shall make payments for services provided by a county or city ambulance service directly or co-payable to the county or city ambulance service provider. This act is effective July 1, 2009 and applies to services provided on or after that date.

This bill is intended to reduce the financial loss to counties and cities for unreimbursed ambulance services. This provision would change the payee for such services. This bill is not expected to have a material financial impact on the Plan's medical costs.

The Plan has estimated administrative costs to implement the procedures of this bill at $43,000 to $76,000.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, FCA, EA
Consulting Actuary

MVH/mt

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 375
PROPOSED COMMITTEE SUBSTITUTE S375-CSRC-2 [v.1]

3/25/2009 12:49:24 PM

Short Title: Insurance/Cover Hearing Aids. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS AND THE STATE HEALTH PLAN TO COVER HEARING AIDS AND REPLACEMENT HEARING AIDS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-280. Coverage for hearings aids.**

(a) Every health benefit plan, including the State Health Plan for Teachers and State Employees, shall provide coverage for one hearing aid per hearing-impaired ear up to two thousand five hundred dollars ($2,500) per hearing aid every 36 months for covered individuals under the age of 22 years subject to subsection (b). The coverage shall include all medically necessary hearing aids and services that are ordered by an audiologist licensed in this State. Coverage shall be as follows:

(1) Initial hearing aids and replacement hearing aids not more frequently than every 36 months.

(2) A new hearing aid when alterations to the existing hearing aid cannot adequately meet the needs of the covered individual.

(3) Services and supplies including the initial hearing aid evaluation, fitting, and adjustments.

(b) The same deductibles, coinsurance, and other limitations as apply to similar services covered under the health benefit plan apply to hearing aids and related services and supplies required to be covered under this section.

(c) Nothing in this section prevents an insurer from applying utilization review criteria to determine medical necessity as defined by G.S. 58-50-61 as long as it does so in accordance with all requirements for utilization review programs and medical necessity determinations specified in that section, including the offering of an insurer appeal process and where applicable, health benefit plans external review as provided in Part 4 of Article 50 of Chapter 58 of the General Statutes."

SECTION 2. G.S. 135-45.8(13) reads as rewritten:

"**§ 135-45.8. General limitations and exclusions.**

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-45.6 through G.S. 135-45.11 be payable for:

...

(13) Charges for eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia ~~persons) and hearing aids or examinations for the prescription or fitting thereof.~~ persons).

...."

SECTION 3. This act becomes effective March 1, 2010, and applies to health benefit plans that are delivered, issued for delivery, or renewed on and after that date.

SENATE BILL 375:
Insurance/Cover Hearing Aids

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Appropriations/Base Budget	**Date:**	May 27, 2009
Introduced by:	Sen. Purcell	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 375 would require every health benefit plan, including the State Health Plan for Teachers and State Employees, to provide coverage for one hearing aid per hearing-impaired ear up to $2,500 per hearing aid every 36 months. This coverage would apply to individuals under the age of 22.***

BILL ANALYSIS:

Section 1 of the bill requires every health benefit plan, including the State Health Plan for Teachers and State Employees, to provide coverage for one hearing aid per hearing-impaired ear up to $2,500 per hearing aid every 36 months. This coverage would apply to individuals under the age of 22.

Coverage must include all medically necessary hearing aids and services ordered by an audiologist, including services and supplies, and an initial hearing aid evaluation, fitting and adjustments. New hearing aids must be provided when alterations to an existing hearing aid is inadequate.

Utilization review criteria may be applied by an insurer in accordance with current law, including the required insurer appeal process. G.S. 58-50-61(a)(17) defines "utilization review" as a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, providers, or facilities.

Section 2 of the bill makes a technical change by deleting language excluding hearing aids and examinations from covered expenses under the State Health Plan.

EFFECTIVE DATE: Senate Bill 375 becomes effective March 1, 2010 and applies to health benefit plans delivered, issued or renewed on or after that date.

S375-SMRG-53(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: Senate Bill 375 (First Edition)

SHORT TITLE: Insurance/Cover Hearing Aids.

SPONSOR(S): Senator Purcell

SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: The proposed bill requires the Plan, and other health benefit plans subject to Chapter 58 of the General Statutes, to provide hearing aid equipment coverage for hearing impaired plan members up to the age of 22. The limit on coverage is $2,500 per hearing aid per hearing impaired ear plus related services every 36 months per qualifying plan member. Application by the Plan of annual deductibles, co-insurance and other limitations for similar services would be allowed under the bill provided these same requirements are applied to other similar services.

EFFECTIVE DATE: January 1, 2010

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for Teachers and State Employees, estimates that the bill's requirements will have a financial impact on the Plan's medical costs of approximately $270,000 per fiscal year of the biennium.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, estimates that the bill's requirements will have a financial impact on the Plan's medical costs of approximately $255,000 per fiscal year of the biennium.

The additional cost impact, projected by either consulting actuary, would be expected to impact premium rates by less than one one-hundredth of one percent (0.01%) annually.

ASSUMPTIONS AND METHODOLOGY: The actuarial analyses used by each respective consulting actuary are on file with the Fiscal Research Division. Copies of each respective consulting actuary's analysis, including assumptions, are also attached to the original copy of this Legislative Actuarial note.

Summary Information and Data about the Plan

The Plan administers health benefit coverage for active employees from employing units of State agencies and departments, universities, local public schools, and local community colleges. Eligible retired employees of authorized employing units may also access health benefit coverage under the Plan. Eligible dependents of active and retired employees are authorized to participate in the Plan provided they meet certain requirements. Employees and retired employees of selected local governments may also participate in the Plan under certain conditions. Members of fire, rescue squads, and the National Guard may also obtain coverage under the Plan provided they meet certain eligibility criteria.

As of July 1, 2008, the State finances the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts are derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage are paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.6 billion for FY 2008-09. The Plan's PPO benefit design includes three alternative benefit levels offered to plan members. The three alternative benefit levels include the following:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums;

2) The "Standard" 80/20 plan; and

3) The "Plus" 90/10 plan with enhanced benefits via lower out-of pocket requirements as compared to the other PPO plan alternatives offered.

Employees and retired employees electing coverage under the Plus alternative must make a partially contributory premium contribution for their own coverage. The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under all plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.4 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss is projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses are expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year. It is currently estimated by the Plan's Executive Administrator that the Plan will not be able to pay claims on a timely basis by March 31, 2009.

Consequently, the reforecast of Plan finances now indicates that the Plan will require up to $300 million in additional resources to operate for the balance of the 2008-09 fiscal year. This amount represents the

estimated funds necessary to pay claims and administrative expenses through June 30, 2009, plus funding a minimum stabilization reserve equal to 7.5% of projected claims, and assuming a future premium rate increase effective October 1, 2009.

Other Information

Additional assumptions include Medicare benefit "carve-outs," cost containment strategies including prior approval for certain medical services, utilization of the "Blue Options" provider network, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection, and other authorized actions by the Executive Administrator and Board of Trustees to manage the Plan to maintain and improve the Plan's operation and financial condition where possible. Claim cost trends are expected to increase at a rate of 9% annually according to the Plan's consulting actuary. Investment earnings are based upon a 4.5% return on available cash balances.

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	35,254	533,204	98,351	666,809	100%
Percent of Total	5.3%	80.0%	14.7%	100.0%	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	13,481	401,253	66,319	481,053

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	100.0%	100.0%	100.0%	100.0%

Enrollment Data Continued

III. Enrollment by Sex	Basic	Standard	Plus	Total
Female	18,837	334,917	61,752	415,506
Male	16,417	198,287	36,599	251,303
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Sex	Basic	Standard	Plus	Total
Female	53.4%	62.8%	62.8%	62.3%
Male	46.6%	37.2%	37.2%	37.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

IV. Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	17,390	136,277	27,211	180,878
30 to 44	8,125	107,375	17,315	132,815
45 to 54	5,164	94,548	18,277	117,989
55 to 64	3,195	102,901	23,452	129,548
65 & Over	1,380	92,103	12,096	105,579
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	49.3%	25.6%	27.7%	27.1%
30 to 44	23.0%	20.1%	17.6%	19.9%
45 to 54	14.6%	17.7%	18.6%	17.7%
55 to 64	9.1%	19.3%	23.8%	19.4%
65 & Over	3.9%	17.3%	12.3%	15.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

V. Retiree Enrollment by Category	Employee	Dependents	Total
Non-Medicare Eligible	49,534	12,080	61,614
Medicare Eligible	97,240	7,448	104,688
Total	**146,774**	**19,528**	**166,302**

Percent by Category (Retiree)	Employee	Dependents	Total
Non-Medicare Eligible	33.7%	61.9%	37.0%
Medicare Eligible	66.3%	38.1%	63.0%
Total	**100.0%**	**100.0%**	**100.0%**

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "Senate Bill 375: An Act to Require Health Benefit Plans and the State Health Plan to Cover Hearing Aids and Replacement Hearing Aids", April 20, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "Senate Bill 375: Cover Hearing Aids", April 20, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY:

Marilyn Chism, Director
Fiscal Research Division

DATE: April 21, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

SENATE BILL 375

COVER HEARING AIDS

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

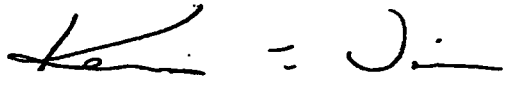
April 2009

ACTUARIAL STATEMENT

The North Carolina State Health Plan for Teachers and State Employees has requested that Aon Consulting prepare an Actuarial Note in response to Senate Bill 375 entitled "An Act To Require Health Benefit Plans And The State Health Plan To Cover Hearing Aids And Replacement Hearing Aids."

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.



April 20, 2009

Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

Date



April 20, 2009

Kirsten R. Schatten, A.S.A., M.A.A.A.
Assistant Vice President

Date

COVER HEARING AIDS

PLAN CHANGES

The proposed legislation requires all health benefit plans and the State Health Plan to cover hearing aids and replacement hearing aids. The full text of the bill is attached to this actuarial note.

PROJECTED COSTS

	Based on "Midpoint" Increase (in millions)		
Plan Design Change	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Cover hearing aids and replacement hearing aids	$.27	$.27	$.54

* Based on total projected expenses of $2,687,502,073 and $2,919,507,795 for the 2010 and 2011 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- Prevalence of children with moderate to profound hearing loss is estimated at .14% based on studies published by the Centers for Disease Control and Prevention (CDC).
- Total claimants are estimated at 173 based on Plan members under the age of 22 years.
- 33% of total claimants are expected to be covered for hearing aids each year based on coverage every 3 years. A spike in claims could occur in the first year for new coverage; however, this would be offset in the following year or two.
- 31% of claims are estimated to cover one hearing aid and 69% of claims are estimated to cover two hearing aids based on claims level data received from NC Health Choice.
- Projected costs incorporate a 10% risk factor.
- Based on an effective date of July 1, 2009, the projected cost to cover hearing aids is $267,736 per year.
- Survey information was also collected from other states covering this benefit. The information received confirmed reasonableness of the assumptions used in our calculations.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 375

Short Title:	Insurance/Cover Hearing Aids.	(Public)
Sponsors:	Senators Purcell; Apodaca, Bingham, Brunstetter, Dorsett, Forrester, McKissick, Rand, and Rouzer.	
Referred to:	Commerce.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS AND THE STATE HEALTH PLAN TO COVER HEARING AIDS AND REPLACEMENT HEARING AIDS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-280. Coverage for hearings aids.**

(a) Every health benefit plan, including the State Health Plan for Teachers and State Employees, shall provide coverage for the full cost of one hearing aid per hearing-impaired ear up to two thousand five hundred dollars ($2,500) per hearing aid every 36 months for covered individuals under the age of 22 years. The coverage shall include all related services that are prescribed by an audiologist licensed in this State. The prescribed hearing aids shall be medically appropriate to meet the needs of the individual according to accepted professional standards. Coverage shall be as follows:

(1) Initial hearing aids and replacement hearing aids not more frequently than every 36 months.

(2) A new hearing aid when alterations to the existing hearing aid cannot adequately meet the needs of the child.

(3) Services and supplies including the initial hearing aid evaluation, fitting, and adjustments that are provided according to accepted standards.

(b) The same deductibles, coinsurance, and other limitations as apply to similar services covered under the health benefit plan apply to hearing aids and related services and supplies required to be covered under this section."

SECTION 2. G.S. 135-45.8(13) reads as rewritten:

"**§ 135-45.8. General limitations and exclusions.**

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-45.6 through G.S. 135-45.11 be payable for:

...

(13) Charges for eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia ~~persons) and hearing aids or examinations for the prescription or fitting thereof.~~ persons).

...."

SECTION 3. This act becomes effective January 1, 2010, and applies to health benefit plans that are delivered, issued for delivery, or renewed on and after that date.

HARTMAN & ASSOCIATES, LLC

ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

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668 Link Road
Lexington, NC 27295

April 20, 2009

Mr. Mark Trogdon
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: Senate Bill 375: An Act to Require Health Benefit Plans and the State Health Plan to Cover Hearing Aids and Replacement Hearing Aids

Dear Mr. Trogdon:

This bill amends G.S. 58-3-280 by adding a new section requiring every health benefit plan, including the North Carolina State Health Plan for Teachers and State Employees (the "Plan"), to provide coverage for the full cost of one hearing aid per hearing-impaired ear for covered individuals under the age of 22. Coverage is limited to a maximum of $2,500 per hearing aid. Coverage would include the initial hearing aid and replacement hearing aids not more frequently than every 36 months. The same deductibles, coinsurance, and other limitations as apply to similar services must apply to coverage for hearing aids.

The bill also amends G.S. 135-45.8 to remove hearing aids from the exclusions under the Plan. This act is effective January 1, 2010.

The estimated impact of this bill was determined by projecting the number of claims for hearing aids under the Plan. Data was obtained from research from the Centers for Disease Control, the Gallaudet Research Institute, and the Plan's survey of other state health plans. Based on this projection, the estimated annual cost of this bill is $255,000.

This cost assumes hearing aids are replaced every 3 years. I used an incidence rate of 1.4 hearing impaired individuals per 1000 members under the age of 22. 60% of all claims are projected to be for two hearing aids. Plan membership is assumed to remain constant at the December, 2008 level. Although the bill is effective for only six months in the initial fiscal year, no cost reduction was calculated to allow for higher initial utilization.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, FCA, EA
Consulting Actuary

MVH/mt

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 135
Committee Substitute Favorable 3/19/09

Short Title: Broadband Service Providers. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT PERMITTING CERTAIN BROADBAND SERVICE PROVIDERS THAT PROVIDE VOICE GRADE COMMUNICATIONS SERVICES WITHIN A DEFINED SERVICE TERRITORY OR FRANCHISE AREA TO OFFER SUCH VOICE GRADE SERVICE AS AN INCIDENT TO BROADBAND SERVICE IN AREAS CONTIGUOUS TO THE PROVIDERS' SERVICE TERRITORY OR FRANCHISE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-113 is amended by adding a new subsection to read:

"(c) Any broadband service provider that provides voice grade communication services within a defined service territory or franchise area, and elects to provide broadband service in areas contiguous to its service territory or franchise area, may provide such voice grade service as an incident to such broadband service to a customer when the incumbent telecommunications or cable provider is not currently providing broadband service to the customer, without violating its service territory restrictions or franchise agreement."

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

HOUSE BILL 135:
Broadband Service Providers

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 26, 2009
Introduced by:	Reps. Faison, Tolson, Haire, Tillis	**Prepared by:**	Steven Rose Committee Counsel
Analysis of:	Second Edition		

SUMMARY: HB 135 would permit broadband service providers that provide telephone service within a defined service area to also offer telephone service to their broadband customers in areas contiguous to the providers' defined service area.

CURRENT LAW: The laws pertaining to utility franchises are set out in Article 6 of The Public Utilities Act. Under G.S. 62-113, each utility franchise must specify the service to be rendered and the route over which and the territory within which a public utility is authorized to operate. The Public Utilities Act applies to telephone service, but broadband service is not regulated by the Utilities Commission.

BILL ANALYSIS: The bill would amend G.S. 62-113 concerning the terms and conditions of public utility franchises. The bill provides that a broadband service provider that provides telephone service within a defined service territory or franchise area may, in any area contiguous to its defined territory, provide telephone service to a customer as an incident to broadband services. This provision would apply only when the adjacent incumbent telecommunications or cable provider is not providing broadband service to the customer.

EFFECTIVE DATE: The act would be effective when it becomes law.

BACKGROUND: The bill is a recommendation of the House Select Committee on High Speed Internet Access in Rural Areas.

Brenda Carter, Counsel to the House Ways and Means/Broadband Committee, contributed to this summary.

H135-SMRL-75(e2) v1

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.

HOUSE BILL 1027:
Prepaid Wireless Telephone Service/Sunset

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 26, 2009
Introduced by:	Rep. Brubaker	**Prepared by:**	Steven Rose
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 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 revenue by $50, and multiply the result by 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 Committee on Public Utilities, substantially contributed to this summary.

H1027-SMRL-76(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1180
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1180-CSTD-41 [v.6]

5/27/2009 4:43:14 PM

Short Title: Consumer Choice and Investment Act of 2009. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, Voice-over Internet Protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional consumer choices for these services; and

Whereas, traditional telephone service providers remain subject to certain antiquated statutory and regulatory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive consumers of traditional telephone companies of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions for traditional telephone companies will relieve consumers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to consumers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, the General Assembly hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.5 is amended by adding a new subsection to read:

"(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission, which

election shall become effective immediately upon filing. A local exchange company shall not be permitted to make the election under this section unless it commits to provide stand-alone basic residential lines to rural customers at rates comparable to those rates charged to urban customers for the same service.

(1) Definitions. – The following definitions apply in this subsection:

a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).

b. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).

c. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.

(2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.

b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines.

(3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.

b. Otherwise regulate any of the local exchange company's retail services.

(4) A local exchange company's election under this subsection does not affect the obligations of an incumbent local exchange carrier, as that term is defined by section 251 (h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.

(5) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1.

(6) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning the following:

a. Enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.

b. The telecommunications relay service pursuant to G.S. 62-157.

c. The Life Line or Link Up programs consistent with Federal Communications Commission rules, including, but not limited to, 47 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission.

d. Universal service funding pursuant to G.S. 62-110(f1).

e. Carrier of last resort obligations pursuant to G.S. 62-110.

f. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company.

SECTION 2. G.S. 62-133.5 is amended by adding a new subsection to read:

"(i) To the extent applicable, a competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section."

SECTION 3. G.S. 62-133.5 is amended by adding a new subsection to read:

"(j) Notwithstanding any other provision of this Chapter, the Commission has jurisdiction over matters concerning switched access and intercarrier compensation of a local exchange company that has elected to operate under price regulation, as well as a local exchange carrier or competing local provider operating under any form of regulation covered under this Article or G.S. 62-110(f1)."

SECTION 4. G.S. 62-133.5 is amended by adding a new subsection to read:

"(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Utility Review Committee must review the annual reports and decide whether to recommend that the General Assembly take corrective action in response to those reports. The report shall include the following:

(1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from enactment of the Consumer Choice and Investment Act of 2009.

(2) An analysis of service quality based on customer satisfaction studies from enactment of the Consumer Choice and Investment Act of 2009.

(3) An analysis of the level of local exchange rates from enactment of the Consumer Choice and Investment Act of 2009."

SECTION 5. Article 4 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-73.1. Complaints against providers of telephone services.**

(a) A local exchange company or competing local provider that is unable to resolve a customer complaint shall (i) provide notice to the consumer of the consumer's right to contact the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact information for the Public Staff including both a toll-free telephone number and an electronic mail address.

(b) The Public Staff shall keep a record of all complaints received pertaining to the provider, including the nature of each complaint and the resolution thereof. If the Public Staff determines that it cannot reasonably resolve the matter, the matter shall be referred to the Commission. The standard for review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate."

SECTION 6. G.S. 62-302(b)(4) reads as rewritten:

"(b) Public Utility Rate. –

...

(4) As used in this section, the term "North Carolina jurisdictional revenues" ~~means~~ means:

a. ~~all~~ All revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

b. All revenues derived from retail services no longer otherwise regulated by the operation of G.S. 62-133.5(h) for a local exchange company or competing local provider that has elected to be regulated under that subsection."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1180:
Consumer Choice and Investment Act of 2009

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 27, 2009
Introduced by:	Reps. Holliman, Brubaker, Tillis, Tolson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H1180-CSTD-41		

SUMMARY: ***House Bill 1180 would provide an alternative plan of regulation for telephone providers. The proposed committee substitute to House Bill 1180 makes the following changes:***

- ***Requires a company to be open to competition from competing local providers in order to elect this treatment.***
- ***Provides that an election under this plan does not affect the authority of the Utilities Commission to manage numbering resources.***
- ***Provides that the fee paid to the Commission will not decline as a result of a company's election under this plan.***

BILL ANALYSIS: The proposed committee substitute allows a local exchange provider (LEC) open to competition from competing local providers or competing local provider (CLEC) to elect to have its rates, terms and conditions of service determined pursuant to a new plan. A LEC may only choose this new plan if LEC commits to provide stand-alone basic service to rural customers at rates comparable to those rates charged to urban customers for the same service.

Rates for basic service: After entering into this plan, the LEC may not increase the amount charged for basic residential service more than the percentage increase of the GDP each year, unless otherwise authorized by the Commission. Other than to enforce this rate increase standard, the Commission cannot regulate rates or service standards for basic service.

Authority retained by the Utilities Commission: The Utilities Commission retains authority over the following:

1. Obligations of LECs under sections 251 and 252 of the Federal Telecommunications Act of 1996.
2. Federal requirements of LECSs marketing requirements.
3. Telecommunications relay service.
4. Lifeline or Link Up programs.
5. Universal Service Programs.
6. Carrier of last resort obligations.
7. The ability to hear consumer complaints regarding LECs.
8. Intercarrier compensation rates of LECs.
9. The authority delegated to the Commission by the FCC to manage numbering resources.

Report: Each LEC or CLEC offering basic local residential exchange service that chooses this new plan must report to the General Assembly annually on its operations. The report must include the following from the enactment of this Act:

1. Analysis of competition including lines lost and lines gained.
2. Analysis of consumer satisfaction studies.
3. Analysis of rates.

Consumer complaints: LECs and CLECs must inform any customer complainants that the customer may contact the Public Staff of the Utilities Commission, and provide contact information for the Public Staff. The Public Staff must keep a record of all complaints. If the Public Staff cannot dispose of the complaint, the matter may be referred to the Commission. The standard of review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate.

Utility Regulatory Fee: The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing regulated utility service in North Carolina. House bill 1180 amends the definition of jurisdictional revenues to include revenue derived from retail services but no longer subject regulation due to the election of a company to this new plan,

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

H1180-SMTD-77(CSTD-41) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1180

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

H1180-ARL-16 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
H1180-CSTD-41

Date _____,2009

Senator Berger of Franklin

moves to amend the bill on page 1, line 3 by rewriting that line to read:
"2009, AND EXPANDING THE PURPOSES FOR WHICH 911 FUNDS MAY BE USED BY PUBLIC SAFETY ANSWERING POINTS.";
And on page 4, line 27 by rewriting that line to read:

"**SECTION 7.** G.S. 62A-46(c) reads as rewritten:

'(c) Use of Funds. – A PSAP that receives a distribution from the 911 Fund may not use the amount received to pay for the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring or compensating telecommunicators, or the purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles. Distributions received by a PSAP may be used only to pay for the following:

(1) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software, and database provisioning, addressing, and nonrecurring costs of establishing a 911 ~~system.~~system, the lease, purchase, and maintenance of consoles and telephone and communications equipment owned or operated and physically located within and for the use of the 911 public safety communications center, and the lease, purchase, and maintenance of an additional communications tower, a multisite simulcast system, microwave connectivity between the sites, site monitoring and alarm system, base stations, and grounding and lightning protection for any of the uses authorized by this subdivision.

(2) Expenditures for in-State training of 911 personnel regarding the maintenance and operation of the 911 system. Allowable training expenses include the cost of transportation, lodging, instructors, certifications, improvement programs, quality assurance training, and training associated with call taking, and emergency medical, fire, or law enforcement procedures. Training outside the State is not an eligible expenditure unless the training is unavailable in the State or the PSAP documents that the training costs are less if received out-of-state. Training specific to the receipt of 911 calls is allowed only for intake and related call taking quality assurance and improvement. Instructor certification costs and course required prerequisites, including physicals, psychological exams, and drug testing, are not allowable expenditures.

(3) Charges associated with the service supplier's 911 service and other service supplier recurring charges. The PSAP providing 911 service is responsible to the voice communications service provider for all 911 installation, service, equipment, operation, and maintenance charges owed to the voice communications service provider. A PSAP may contract with a voice communications service provider on terms agreed to by the PSAP and the provider.'

SECTION 8. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 700
PROPOSED COMMITTEE SUBSTITUTE S700-CSRI-27 [v.1]

5/18/2009 2:36:18 PM

Short Title: Dry-Cleaning Solvent Act Amends. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) EXTEND SUNSET DATES APPLICABLE TO THE DRY-CLEANING SOLVENT CLEANUP ACT, THE DRY-CLEANING SOLVENT CLEANUP FUND, AND THE DRY-CLEANING SOLVENT TAX; (2) ALLOW THE USE OF STATE AND LOCAL LAND-USE CONTROLS AND DEED NOTICES IN LIEU OF LAND-USE RESTRICTIONS FOR PROPERTIES IN THE AREA OF CONTAMINATED DRY-CLEANING SITES, NOT INCLUDING PROPERTIES ON WHICH A DRY-CLEANING FACILITY IS OR WAS LOCATED WHICH IS THE SOURCE OF A SITE'S CONTAMINATION; (3) MODIFY NOTICE AND COMMENT REQUIREMENTS ASSOCIATED WITH A NOTICE OF INTENT TO REMEDIATE; AND (4) REMOVE THE LIMITATION ON DISBURSEMENT OF MONIES FROM THE DRY-CLEANING SOLVENT CLEANUP FUND FOR COSTS INCURRED TO ADDRESS DRY-CLEANING SOLVENT CONTAMINATION ON STATE-OWNED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104I reads as rewritten:

"**§ 143-215.104I. Dry-Cleaning solvent remediation agreements.**

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

(1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.



(3) There is a public benefit commensurate with the liability protection provided under this Part.
(4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
(5) The petitioner has complied with or will comply with all applicable procedural requirements.
(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.
(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
(8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.
(10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(b1) For properties in the area of a contamination site, other State or local land-use controls and notifications may be used in lieu of land-use restrictions. Any land-use controls used shall adequately protect human health and the environment, both currently and in the future, from exposure to dry-cleaning solvent contamination. If controls are used in lieu of land-use restrictions, then a Notice of Dry-Cleaning Solvent Remediation shall be prepared in accordance with the provision set forth in subdivisions (1) through (4) of G.S. 143-215.104M(b) and filed in accordance with subsections (c) through (g) of G.S. 143-215.104M. In the event that the owner of the property fails to submit and file the required Notice within the time specified, the Commission may prepare and file the Notice. This subsection shall not apply to properties on which a dry-cleaning facility is or was located which is the source of the contamination.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:
a. A description of specific areas where remediation is to be conducted.
b. The remediation method or methods to be employed.
c. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
d. A schedule of remediation activities.
e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use ~~restrictions~~ restrictions and State and local land-use controls and notifications that will apply to the contamination site or other property.

(3) The desired results of any ~~remediation or~~ remediation, land-use ~~restrictions~~ restrictions, or State or local land-use controls or notifications with respect to the contamination site.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(6) The priority ranking of the facility or abandoned site.

(7) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if the petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the basis set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with an owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement authorities and limitations set out in this Part. A remediation agreement shall provide that the Commission's private contractor conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner."

SECTION 2. G.S. 143-215.104K reads as rewritten:

"**§ 143-215.104K. Liability protection.**

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as any activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

(1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.

(2) Any future owner of the contamination site.

(3) A person who occupies the contamination site.

(4) A successor or assign of any person to whom the liability protection provided under this Part applies.

(5) Any lender or fiduciary that provides financing to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to unrestricted use standards. A petitioner who completes the remediation ~~or redevelopment~~ required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

(1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.

(2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to unrestricted use standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.

(3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination ~~site or~~ site; (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation ~~agreement.~~agreement; or (iii) removal of a State or local land-use control.

(4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the

contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.

(5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.

(6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.

(7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization."

SECTION 3. G.S. 143-215.104L reads as rewritten:

"**§ 143-215.104L. Public notice and community involvement.**

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, or on the use of State or local land-use controls and notifications, the Commission or the Commission's private contractor on behalf of the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation ~~and redevelopment~~ activities. On behalf of the petitioner, the Commission or the Commission's private contractor shall prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a ~~proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M.~~description of any land-use restrictions and State and local land-use controls and notifications that will be used. 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 dry-cleaning solvent remediation 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 Commission, the Commission or the Commission's private contractor shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The Commission or Commission's private contractor shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall mail a copy of the summary to each owner of property located within the contamination site and to each owner of property that is contiguous to the contamination site. ~~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.~~ The Commission or the Commission's private contractor shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina Register and publication~~ in a newspaper of general circulation shall begin a public comment period of at least ~~60~~ 30 days from the ~~later~~ date of publication. During the public comment

period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation 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 dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within ~~30~~ 21 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least ~~30~~ 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. The Commission shall also publish, at least ~~30~~ 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 the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written ~~dry-cleaning solvent remediation agreement.~~comments received during the public meeting. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis."

SECTION 4. G.S. 143-215.104N(b) reads as rewritten:

"(b) Limitations. – Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

...

~~(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.~~"

SECTION 5. Section 8 of S.L. 1997-392 reads as rewritten:

"Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the provisions of that section. Sections 1 and 4.1 of this act are repealed effective 1 January 2022. Section 4 of this act is repealed effective 1 January 2020.~~Section 4 of this act is repealed effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012.~~ However:

(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.

(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.

(3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose."

SECTION 6. Section 23 of S.L. 2000-19 reads as rewritten:

"Section 23. Section 1.1 of this act becomes effective April 1, 2003, and expires June 30, ~~2010.~~2020. Section 1.2 of this act becomes effective October 1, 2001, and expires January 1, ~~2010.~~2020. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002. Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective when this act becomes law."

SECTION 7. This act becomes effective July 1, 2009.

SENATE BILL 700:
Dry-Cleaning Solvent Act Amends

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 19, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to First Edition S700-CSRI-27		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 700 would: (i) extend sunset dates applicable to the Dry-Cleaning Solvent Cleanup Act (DSCA); (ii) allow the use of State and local land-use controls and deed notices in lieu of land-use restrictions for properties in the area of contaminated dry-cleaning sites; (iii) modify notice and comment requirements associated with a notice of intent to remediate a dry-cleaning site; and (iv) remove the limitation on disbursement of monies from the Fund for costs incurred to address dry-cleaning solvent contamination on State-owned property.***

The PCS makes one technical correction to the First Edition.

[As introduced, this bill was identical to H761, as introduced by Rep. Gibson, which is currently in House Environment and Natural Resources, if favorable, Judiciary III, if favorable, Finance.]

CURRENT LAW and BACKGROUND: In 1997, the General Assembly enacted the DSCA to provide a fund, administered by the Department of Environment and Natural Resources, to assess and cleanup contaminated dry-cleaning sites using state-lead contractors. The source for the cleanup fund is a tax on dry-cleaning and dry-cleaning solvents (both perchloroethylene and petroleum-based solvents). The programmatic elements of the DSCA are currently slated to be repealed on January 1, 2012. The transfer of a portion of the sales and use taxes collected from dry-cleaning services to the Dry-Cleaning Solvent Cleanup Act Fund (Fund) is scheduled to end on June 30, 2010. Collection of the Dry-Cleaning Solvent Tax (Solvent Tax) which is deposited into the Fund is scheduled to be repealed on January 1, 2010.

To date, 202 contaminated dry-cleaning sites have been accepted into the DSCA Program for cleanup. As of the end of calendar year 2008, three sites will be closed. At least eight more sites are on schedule to be closed by June of 2009. The future cost to complete clean up and close the remaining 199 sites is estimated to be approximately $34 million. The Division of Waste Management (DWM) in the Department of Environment and Natural Resources estimates there are approximately 1,300 additional contaminated sites across the State with 550 of those predicted to be brought into the DSCA Program. The cost to clean up these additional 550 sites is projected to be approximately $138 million. As of the end of 2008, the program will be spending more ($10.5 million) than it is receiving in revenues ($10.1 million). This trend of expenditures exceeding revenues is expected to increase as more sites enter the remedial phase of the program bringing the current balance to a level that will require addressing sites in order of priority. [1]

BILL ANALYSIS: The PCS would:

[1] Information provided by DWM.

- Extend the sunset dates applicable to: (1) implementation of DSCA from January 1, 2012 to January 1, 2022; (2) collection of the Solvent Taxes from January 1, 2010 to January 1, 2020; and (3) transfer of the dry-cleaning sales and use tax to the Fund from June 30, 2010 to June 30, 2020.
- Allow the use of State and local land-use controls (e.g., groundwater use restrictions, ordinances) and deed notices in lieu of land-use restrictions on property ***in the area*** of a contaminated dry-cleaning site ***(land use controls would not be available for properties on which a dry-cleaning facility is or was located)***. Land-use controls must adequately protect human health and the environment, be included in a Notice of Dry-Cleaning Solvent Remediation, and filed in the office of the register of deeds of the county or counties in which the property in question is located.
- Amend public notice requirements applicable to a proposed cleanup of a contaminated dry-cleaning site by: 1) adding a requirement that a summary of the Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site be mailed to each owner of property within the contamination site or contiguous to it; (2) removing the requirement to publish the summary of the Notice of Intent in the North Carolina Register; (3) reducing the minimum public comment period from 60 days to 30 days; and (4) requiring minutes of any public meeting held on a proposed dry-cleaning solvent remediation agreement to include written comments received during the meeting.
- Allow DSCA to pay for cleanups of dry-cleaning contamination discovered on properties owned by the State. Current law prohibits disbursement of monies from the Fund for this purpose.

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

S700-SMRI-45(CSRI-27) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 935
PROPOSED COMMITTEE SUBSTITUTE S935-CSROf-52 [v.1]

5/27/2009 7:34:08 PM

Short Title: Amend Marriage & Family Licensure Laws/Fees. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE MARRIAGE AND FAMILY THERAPY LICENSURE LAWS AND AUTHORIZING THE NORTH CAROLINA MARRIAGE AND FAMILY THERAPY LICENSURE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.47 reads as rewritten:

"**§ 90-270.47. Definitions.**

As used in this Article, unless the context clearly requires a different meaning:

(1) ~~"Allied mental health field" and "degree" mean:~~Related degree means:
  a. Master's or doctoral degree in clinical social work;
  b. Master's or doctoral degree in psychiatric nursing;
  c. Master's or doctoral degree in counseling or clinical or counseling psychology;
  d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
  e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy.

(2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.

(2a) 'Clinical experience' means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.

(2b) 'Larger systems' means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.

(3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.

(3a) 'Licensed marriage and family therapy associate' means an individual to whom a license has been issued pursuant to this Article whose license is in

force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the supervision of an American Association for Marriage and Family Therapy (AAMFT) approved supervisor in accordance with rules adopted by the Board.

~~(3a)~~(3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with ~~other~~ health care and other professionals when appropriate.

(4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

(5) "Recognized educational institution" means any ~~educational institution that grants a bachelor's, master's, or doctoral degree and is recognized by the Board and by a nationally or regionally recognized educational or professional accrediting body.~~ university, college, professional school, or other institution of higher learning that:

a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.

b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.

c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board."

SECTION 2. G.S. 90-270.48 reads as rewritten:

"**§ 90-270.48. Prohibited acts.**

Except as specifically provided elsewhere in this Article, it is unlawful for a person not licensed as a marriage and family therapist or as a licensed marriage and family therapy associate under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy."

SECTION 3. G.S. 90-270.48A reads as rewritten:

"**§ 90-270.48A. Exemptions.**

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, licensed or certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title "Licensed Marriage and Family ~~Therapist,~~"Therapist' or "Licensed Marriage and Family Therapy Associate," use the letters ~~"LMFT,"~~"LMFT" or "LMFTA", or in any way imply that the person is a licensed marriage and family therapist or a licensed marriage and family therapy associate unless the person is licensed as such under this Article.

(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

(1) The person is (i) ~~preparing for the practice of marriage and family therapy in a manner prescribed by rules of the Board,~~enrolled in a master's level program or higher in a recognized educational institution, (ii) under ~~qualified~~ supervision as approved by the Board in a training institution ~~or facility or supervisory arrangement recognized and~~ approved by the Board, and (iii) designated by a title such as "marriage and family therapy ~~intern," or "marriage and family therapy supervisee," or another similar title approved by the Board.~~intern."

(2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.

~~(3) The person is practicing marriage and family therapy as an employee of a nonprofit organization which the Board has determined meets community needs and the practice is included in the duties for which the person was employed by the nonprofit organization.~~

(4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes.

(c) No such person practicing marriage and family therapy under the exemptions provided by this section shall hold himself out as a licensed marriage and family therapist or licensed marriage and family therapy associate."

SECTION 4. G.S. 90-270.49(a) reads as rewritten:

"(a) Establishment. – There is established as an agency of the State of North Carolina the North Carolina Marriage and Family Therapy Licensure Board, which shall be composed of seven Board members to be appointed as provided in G.S. 90-270.50. Board members shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Board member whom ~~he~~ the appointee shall succeed. Upon the expiration of a Board member's term of office, the Board member shall continue to serve until a successor has qualified. No person may be appointed more than once to fill an unexpired term or for more than two consecutive full terms. ~~The Governor shall designate one Board member to serve as chairperson of the Board.~~ The Board shall elect a chair and vice-chair from its membership to serve a term of four years. No person may serve as chairperson for more than four years.

The Governor may remove any member from the Board or remove the chairperson from the position of chairperson only for neglect of duty, malfeasance, or conviction of a felony or crime of moral turpitude while in office.

No Board member shall participate in any matter before the Board in which the member has a pecuniary interest, personal bias, or other similar conflict of interest."

SECTION 5. G.S. 90-270.51(e) reads as rewritten:

"(e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year."

SECTION 5.1. G.S. 90-270.51 is amended by adding a new subsection to read:

"(h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S.132-1. A licensee or an

agency employing a licensee shall maintain records for a minimum of 5 years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board."

SECTION 6. G.S. 90-270.54 reads as rewritten:

"**§ 90-270.54. Requirements for ~~license.~~licensure as a marriage and family therapist.**

(a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Meets educational and experience qualifications as follows:

a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and family therapy, or a related ~~degree in an allied mental health field,~~degree, which degree is evidenced by the applicant's official ~~transcripts which establish that the applicant has completed an appropriate course of study in an allied mental health field.~~transcripts. An applicant with a related degree ~~in an allied mental health field~~ may meet the educational requirements if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or ~~an allied mental health field~~a related degree (with ongoing supervision consistent with standards approved by the Board); and

(2) Passes an examination ~~administered~~ approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58."

SECTION 7. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.54A. Requirements for licensure as a marriage and family therapy associate.**

(a) Each applicant shall be issued a license by the Board to engage in practice as a marriage and family therapy associate if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

(1) Has completed a marriage and therapy degree or related degree in accordance with G.S. 90-270.54(a)(1)a.
(2) Has shown evidence of intent to accrue the required supervised clinical experience for licensure under G.S. 90-270.54(a)(1)b.
(3) Has filed with the Board an application for licensure as a marriage and family therapy associate, which application includes evidence of the appropriate coursework and an agreement by at least one supervisor approved by the American Association of Marriage and Family Therapy to provide supervision to the applicant.
(4) Has passed the examination approved by the Board pursuant to G.S. 90-270.54(a)(2).

(b) Upon approval by the Board, a license designating the applicant as a licensed marriage and family therapy associate shall be issued. Notwithstanding G.S. 90-270.58, a license issued under this section shall be valid for three years from the date of issuance.

(c) A marriage and family therapy associate license shall not be renewed. However, if upon written petition to the Board a person licensed pursuant to this section demonstrates special circumstances and steady progress towards licensure as a marriage and family therapist, the Board may grant a one-year extension of the marriage and family therapy associate license upon receipt and approval of an application for extension and payment of the fee authorized by G.S. 90-270.57(a)(9).

(d) Nothing in this Article shall be construed to require direct third-party reimbursement under private insurance policies to a person licensed as a marriage and family therapy associate under this Article."

SECTION 8. G.S. 90-270.55 reads as rewritten:

"**§ 90-270.55. Examinations.**

~~The Board shall conduct an examination at least once a year at a time and place designated by the Board. Examinations may be written, oral, or both~~Each applicant for licensure as a licensed marriage and family therapist shall pass an examination as determined by the Board. ~~Examinations shall include questions in theoretical and applied fields to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy.~~ The Board shall set the passing score for examinations. ~~Any person who fails an examination conducted by the Board shall not be admitted to a subsequent examination for a period of at least six months.~~Any request by an applicant for reasonable accommodations in taking the examination shall be submitted in writing to the Board and shall be supported by documentation as may be required by the Board in assessing the request."

SECTION 9. G.S. 90-270.55A is repealed.

SECTION 10. G.S. 90-270.56 reads as rewritten:

"**§ 90-270.56. Reciprocal licenses.**

The Board ~~shall~~ may issue a license as a marriage and family therapist or a marriage and family therapy associate by reciprocity to any person who applies for the license as prescribed by the Board and who ~~is licensed or certified as a marriage and family therapist in another state whose requirements for the license or certificate are equivalent to or exceed the requirements of this State.~~at all times during the application process:

(1) Has been licensed for five continuous years and is currently licensed as a marriage and family therapist or marriage and family therapy associate in another state.
(2) Has an unrestricted license in good standing in the other state.
(3) Has no unresolved complaints in any jurisdiction.
(4) Has passed the National Marriage and Family Therapy examination."

SECTION 11. G.S. 90-270.57 reads as rewritten:

"**§ 90-270.57. Fees.**

(a) In order to fund the Board's activities under this Article, the Board may charge and collect fees not exceeding the following:

(1)	Each license examination	$50.00
(2)	Each license application as a marriage and family therapist	~~150.00~~200.00
(2a)	Each license application as a marriage and family therapy associate	200.00
(3)	Each renewal of license	~~100.00~~200.00
(4)	Each reciprocal license application	~~150.00~~200.00
(5)	Each reinstatement of an expired license	~~125.00~~200.00
(6)	Each application to return to active status	~~125.00~~200.00
(7)	Each duplicate license	25.00
(8)	Each annual maintenance of inactive status	50.00.
(9)	Each application to extend associate license	50.00

In addition to the examination fee provided in subdivision (1) of this section, the Board may charge and collect from each applicant for license examination the cost of processing test results and the cost of test materials.

The Board is authorized to return all or a portion of fees paid in cases where the applicant is ~~ineligible or in cases of undue hardship.~~ ineligible.

(b) The Board may establish fees for the actual cost of (i) document duplication services, (ii) materials, and (iii) returned bank items as allowed by law. All fees listed in subsection (a) of this section shall be nonrefundable."

SECTION 12. G.S. 90-270.58 reads as rewritten:

"**§ 90-270.58. Renewal of license.**

All licenses for marriage and family therapists issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of ~~G.S. 90-270.58B~~ G.S. 90-270.58C and (ii) payment of the renewal fee."

SECTION 13. G.S. 90-270.58B(a) reads as rewritten:

"(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal ~~fees.~~fees, but shall be required to pay an annual inactive status maintenance fee. A person who is on inactive status shall not have to meet continuing education requirements."

SECTION 14. G.S. 90-270.58C reads as rewritten:

"**§ 90-270.58C. Continuing education requirements.**

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship. The Board may waive, upon request, continuing education requirements for licensees who are on active military duty and serving overseas."

SECTION 15. G.S. 90-270.59 reads as rewritten:

"**§ 90-270.59. Disposition of funds.**

All ~~moneys~~ monies received by the Board shall be used to implement this Article."

SECTION 16. G.S. 90-270.60 reads as rewritten:

"**§ 90-270.60. Denial, revocation, or suspension of ~~license.~~license; other disciplinary or remedial actions.**

(a) ~~Grounds for Denial, Revocation, or Suspension.~~ The Board may deny, revoke, or suspend ~~a license granted pursuant to this Article on any of the following grounds:~~licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation, or any combination of the disciplinary actions described in this subsection, of any applicant or person licensed under this Article on one or more of the following grounds:

(1) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~ Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) ~~Conviction of any crime, an essential element of which is dishonesty, deceit, or fraud.~~Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice marriage and family therapy, or a misdemeanor charge reflecting the inability to practice marriage and family therapy with due regard to the health and safety of clients.

(3) ~~Fraud or deceit in obtaining a license as a marriage and family therapist.~~Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) ~~Dishonesty, fraud or gross negligence in the practice of marriage and family therapy.~~ Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of marriage and family therapy, the offer of professional marriage and family therapy services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of marriage and family therapy.

(5) ~~Violation of any rule of professional ethics and professional conduct adopted by the Board.~~ Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of marriage and family therapy to the public, any individual, the Board, or any other organization.

(6) Has had a license or certification for the practice of marriage and family therapy in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.

(7) Has violated any provision of this Article or any rules adopted by the Board.

(8) Has aided or abetted the unlawful practice of marriage and family therapy by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Association for Marriage and Family Therapy. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced marriage and family therapy in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice marriage and family therapy with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced marriage and family therapy outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, student, supervisee, or trainee for the financial or other personal advantage or gratification of the marriage and family therapist or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(b) ~~Any disciplinary action taken shall be in accordance with Chapter 150B of the General Statutes.~~The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of marriage and family therapy deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the marriage and family therapy services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of marriage and family therapy provided by the applicant or licensee with respect to the extent, nature, or location of the marriage and family therapy services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this subsection.

In addition, the Board may impose conditions of probation or restrictions on the continued practice of marriage and family therapy at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing marriage and family therapy with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety

with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be redacted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of marriage and family therapy services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this

subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 17. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-270.63. Criminal history record checks of applicants for licensure as a marriage and family therapist and a marriage and family therapy associate.**

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

(1) Applicant. – A person applying for licensure as a licensed marriage and family therapy associate pursuant to G.S. 90-270.54A or licensed marriage and family therapist pursuant to G.S. 90-270.54.

(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 licensure to practice marriage and family therapy. 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 request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance

with G.S. 114-19.26. 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 or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. 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 duties and responsibilities of a licensee..
(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 or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee 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 licensee. The applicant or licensee 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) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant or licensee's criminal history record check."

SECTION 18. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-26. Criminal history record checks of applicants for licensure as marriage and family therapists and marriage and family therapy associates.**

The Department of Justice may provide to the North Carolina Marriage and Family Therapy Licensure Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 18C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 19. This act becomes effective October 1, 2009.

SENATE BILL 935:
Amend Marriage & Family Licensure Laws/Fees

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 27, 2009
Introduced by:	Sen. Goss	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S935-CSROf-52		

SUMMARY: ***Senate Bill 935 makes various amendments to the Marriage and Family Therapy Licensure Act, including authorizing the licensure of marriage and family therapy associates and increasing fees.***

[As introduced, this bill was identical to H938, as introduced by Rep. England, which is currently in House Health, if favorable, Finance.]

BILL ANALYSIS:

Section 1. Amends the definitions section of the act to include several new definitions such as 'licensed marriage and family therapy associate'. A licensed marriage and family therapy associate is an individual whose license permits them to engage in practice under the supervision of an approved supervisor. It also amends the definitions of the terms 'related degree' and 'recognized educational institution'.

Section 2. Amends the section that prohibits practice without a license to include a licensed marriage and family therapy associate.

Section 3. Amends the section on exemptions from the act. The amendments clarify that a marriage and family therapy intern must be enrolled in a master's level program or higher in a recognized educational institution and under the supervision of a Board approved training institution in order to be exempt from the act. It also eliminates the exemption for people practicing as an employee of a nonprofit organization. Finally, this section clarifies that no exempt person may hold himself out as being licensed.

Section 4. Amends the section that establishes the Board. Currently, the Governor appoints the chairperson of the Board. This is changed to allow the Board to elect a chair and vice-chair from its membership for a four year term.

Section 5. Provides that Board expenditures may not exceed the reserves, as well as the revenues of the Board in any fiscal year.

Section 5.1. Adds to the Board's powers and duties the authority to order records relating to a licensee's practice in the course of investigating a complaint. Any such records are not subject to the public records law. This section also requires a licensee or an employer of a licensee to retain records for at least 5 years from the termination of client services for an adult client. In the case of a minor client, the records must be retained until the later of the date the client is 22 or 5 years from the termination of services.

Section 6. Amends the section relating to requirements for licensure as a marriage and family therapist to clarify the educational and experience requirements. It also changes the examination requirement from an exam *administered* by the Board to one *approved* by the Board.

Section 7. Adds a new section which sets out the requirements for licensure as a marriage and family therapy associate. An applicant must submit the same application information, have the same educational and experience qualifications, and have passed the same examination as are required of marriage and family therapist applicants. In addition the associate applicant must show evidence of appropriate coursework and have an agreement by an approved supervisor to provide supervision to the applicant. An associate license is only valid for three years from the date of issuance and cannot be renewed. However, under certain circumstances, the Board can grant a one-year extension of the license.

Section 8. Amends the section relating to the examination to give the Board more flexibility. In addition, the section adds a requirement that an applicant must request reasonable accommodations to take the exam in writing.

Section 9. Repeals the section that authorizes the Board to grant temporary licenses.

Section 10. Amends the provision relating to reciprocal licenses to add more specific requirements for issuing a license to a therapist or associate who is licensed in another state and seeks to be licensed in this State.

Section 11. Amends the fees which the Board is authorized to charge by increasing all of the fees except the examination fee. This section also adds new fees for a duplicate license, annual maintenance of inactive status, and an application to extend an associate license. The Board is also given authority to establish fees for the actual cost of duplication services, materials, and returned bank items, and makes all fees charged by the Board nonrefundable.

Section 12. Makes a clarifying change to the section relating to renewal of therapists' licenses.

Section 13. Adds a requirement that a licensee who requests to be placed on inactive status must pay an annual inactive status maintenance fee. Section 11 establishes the amount of the fee at $50.00. A person on inactive status is not required to complete continuing education requirements.

Section 14. Authorizes the Board to waive continuing education requirements for licensees on active military duty who are serving overseas.

Section 15. Corrects a spelling error.

Section 16. Clarifies and expands the Boards authority to take disciplinary or remedial actions. The section adds a number of new grounds for discipline including:

- Having been disciplined in another jurisdiction.
- Violating the act or a rule adopted by the Board.
- Aiding and abetting an unlicensed person.
- Being guilty of immoral, dishonorable, unprofessional, or unethical conduct.
- Endangering the welfare of a client.
- Practicing while under the influence of drugs, narcotics, alcohol, chemicals, or other controlled substances.
- Demonstrated incompetence.
- Exploiting a client, student, supervisee, or trainee for financial or personal gain.
- Harassing or abusing, sexually or otherwise, a client, student, supervisee, or trainee.
- Failing to cooperate with the Board or other appropriate entities.

- Refusing to appear before the Board upon an order by the chair.

The Board is also authorized to take additional disciplinary actions, including requiring examination, remediation, or rehabilitation of an applicant or licensee; requiring additional supervision at the licensee's expense; limiting or circumscribing the licensee's practice; or using a combination of disciplinary actions. The Board may assess costs against the applicant or licensee for the disciplinary action. The Board may petition the court to order the applicant or licensee to submit to psychological or physical evaluations. The Board must provide a hearing to any applicant or licensee who is subject to discipline. The records and other documents used by the Board in the course of an investigation are not subject to the Public Records law. However, if the record is admitted in evidence in a hearing, it becomes a public record. A person whose license has been denied or revoked may reapply after one calendar year.

Section 17. Adds a new section authorizing the Board to request that the applicant or licensee undergo a criminal history record check to reveal a conviction of a State or federal crime. The applicant or licensee must consent to the criminal history check and must provide fingerprints. Refusal to consent to the check may constitute grounds for denial or revocation of a license. If the criminal history check reveals a conviction, the Board is not required to bar licensure, but may consider a number of mitigating factors to determine whether the applicant should be disqualified.

Section 18. Adds a corresponding provision to the law allowing the Department of Justice to conduct criminal history record checks for applicants for licensure as a marriage and family therapist or associate.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

S935-SMRO-107(CSROf-52) v1

SENATE COMMERCE COMMITTEE
Tuesday, June 2, 2009 at 1:00 PM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 2, 2009, in Room 1027 of the Legislative Building. Thirty-three members of the committee were present. Senator R.C. Soles presided. Rachel Stroud of New Bern, Sabrina Coppola of Fuquay-Varina, and Matt Kearns of Burlington served as pages.

H.B. 912 - Encourage Use of Military Veteran Contractors.

Representative Killian was recognized to explain the bill which encourages State and local governments to use military veteran contractors. Senator Goodall offered a clarifying amendment. After much discussion, a subcommittee was appointed to review the bill. Senator Jenkins was appointed as chair and the remaining appointees were Senator Apodaca, Senator Blake, Senator Dorsett, and Senator McKissick. A copy of the bill, the summary and the amendment is attached.

H.B. 182 – Traffic Calming Devices/Res. Subdivisions.

Representative Dollar was recognized to explain the bill which allows the placement of traffic tables or traffic calming devices on those portions of State roads within a residential subdivision. Senator Hunt moved for a favorable report with a referral to the Appropriations Committee. The motion carried. A copy of the bill and the summary is attached.

H.B. 825 – Garbage Collection Trucks Parking on Highways.

Representative Owens was recognized to explain the bill. It permits garbage trucks to stop on the pavement of highways outside municipal limits while collecting garbage or recyclable material. Senator Hoyle moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 838 – Create Exemption/Size-Weight for Sage Haulers.

Representative Spear was recognized to explain the bill. Senator Rand moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS creates an exemption for size and weight restrictions of haulers of sage. Senator Dorsett moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 964 – Insurance Guaranty Association Amends.

Representative Dockham was recognized to explain the bill, which expands the discretionary powers of the Insurance Guaranty Association to allow it to contract as a servicing facility for other entities and to conform the association's statutory immunity. Senator Rucho offered an amendment that changed the long title. He moved for the adoption of the amendment and the motion carried. Senator Rucho moved for a favorable report and the motion carried. A copy of the bill, the amendment, and the summary is attached.

H.B. 1124 – UI/Severely Disabled Veterans.

Representative Insko was recognized to explain the bill. The bill relates to unemployment insurance compensation for certain severely disabled veterans discharged for acts or omissions attributed to a service-connected disability. Sergeant Lubecky, a disabled veteran, was recognized to speak in favor of the bill and answer questions. David Clegg, Deputy Chief Officer of the Employment Security Commission, was recognized to answer questions. Senator Nesbit moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

At this time, Senator Soles recognized and welcomed Senator Blue as a new member to the committee.

H.B. 1294 – NC Risk Pool Premiums/Notice Requirements.

Representative Insko was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS authorizes the North Carolina Health Insurance Risk Pool to provide premium subsidies if funds are available and requires insurers to notify applicants for health insurance coverage about the existence of the pool. Michael Keogh, Executive Director of High Risk Pools, was recognized to answer questions. Senator Rand offered a corrective amendment and moved for its adoption. The motion carried. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS, the amendment and the summary is attached.

H.B. 1392 – NC Risk Pool Changes/Out-of-State Services.

Representative Insko was recognized to explain the bill, which authorizes the North Carolina Health Insurance Risk Pool to negotiate rates for services provided to persons covered under the pool by Out-of-State providers. Michael Keogh was recognized to answer questions. A copy of the bill and the summary is attached.

H.B. 1523 – S.A.F.E. Mortgage Licensing Act.

Senator Blue was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS rewrites the North Carolina Mortgage Lending Act in order to conform to the requirements of federal law. Senator Blue moved

for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at noon.

Senator R. C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 02, 2009

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

FAVORABLE

H.B.(CS #2) **182** Traffic Calming Devices/Res. Subdivisions
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

H.B.(CS #1) **825** Garbage Collection Trucks Parking on Highways.
Sequential Referral: None
Recommended Referral: None

H.B. **1124** UI/Severely Disabled Veterans.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **838** Create Exemption/Size-Weight for Sage Haulers.
Draft Number: 50720
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **964** Insurance Guaranty Association Amendments.
Draft Number: 50721
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1294** NC Risk Pool Premiums/Notice Requirements.
Draft Number: 10986

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comments:

H825 – Sen. Jones

H838 – Sen. Jones

H964 – Sen. Brunstetter

H1124 –

H1294 -

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 03, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1523** S.A.F.E. Mortgage Licensing Act.

Draft Number:	70450
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

H1523 – Sen. Blue

Principal Clerk ____
Reading Clerk ____

Corrected: S534 - Healthy Families and Healthy Workplaces Act has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 2, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 182	Traffic Calming Devices/Res. Subdivisions	Representative Dollar Representative Avila
HB 825	Garbage Collection Trucks Parking on Highways.	Representative Owens, Jr.
HB 838	Create Exemption/Size-Weight for Sage Haulers.	Representative Spear
HB 912	Encourage Use of Military Veteran Contractors.	Representative Parmon Representative McElraft Representative Killian Representative Sutton
HB 964	Insurance Guaranty Association Amendments.	Representative Dockham Representative Braxton
HB 1124	UI/Severely Disabled Veterans.	Representative Insko
HB 1294	NC Risk Pool Premiums/Notice Requirements.	Representative Dockham
HB 1392	NC Risk Pool Changes/Out-of-State Services.	Representative Insko
HB 1523	S.A.F.E. Mortgage Licensing Act.	Representative Blue
SB 983	DOT Vegetation Removal Changes.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S916 - Tenant Security Deposit has been removed from the agenda.
S534 - Healthy Families and Healthy Workplaces Act has been added to the agenda.

SENATE
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HB 964	Insurance Guaranty Association Amendments.	Representative Dockham Representative Braxton
HB 1124	UI/Severely Disabled Veterans.	Representative Insko
HB 1294	NC Risk Pool Premiums/Notice Requirements.	Representative Dockham
HB 1392	NC Risk Pool Changes/Out-of-State Services.	Representative Insko
HB 1523	S.A.F.E. Mortgage Licensing Act.	Representative Blue
SB 534	Healthy Families and Healthy Workplaces Act.	Senator Dorsett
SB 983	DOT Vegetation Removal Changes.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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HB 912	Encourage Use of Military Veteran Contractors.	Representative Parmon Representative McElraft Representative Killian Representative Sutton
HB 964	Insurance Guaranty Association Amendments.	Representative Dockham Representative Braxton
HB 1124	UI/Severely Disabled Veterans.	Representative Insko
HB 1294	NC Risk Pool Premiums/Notice Requirements.	Representative Dockham
HB 1392	NC Risk Pool Changes/Out-of-State Services.	Representative Insko
HB 1523	S.A.F.E. Mortgage Licensing Act.	Representative Blue
failed SB 916	Tenant Security Deposit/Interest-Bear. Acct.	Senator Dorsett
SB 983	DOT Vegetation Removal Changes.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S983 - DOT Vegetation Removal Changes has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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HB 1124	UI/Severely Disabled Veterans.	Representative Insko
HB 1294	NC Risk Pool Premiums/Notice Requirements.	Representative Dockham
HB 1392	NC Risk Pool Changes/Out-of-State Services.	Representative Insko
HB 1523	S.A.F.E. Mortgage Licensing Act.	Representative Blue

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, June 2, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 182	Traffic Calming Devices/Res. Subdivisions	Rep. Dollar Rep. Avila
HB 825	Garbage Collection Trucks Parking on Highways.	Rep. Owens
HB 838	Create Exemption/Size-Weight for Sage Haulers.	Rep. Spear
HB 912	Encourage Use of Military Veteran Contractors.	Rep. Parmon Rep. McElraft Rep. Killian Rep. Sutton
HB 964	Insurance Guaranty Association Amendments.	Rep. Dockham Rep. Braxton
HB 1124	UI/Severely Disabled Veterans.	Rep. Insko
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HB 1392	NC Risk Pool Changes/Out-of-State Services.	Rep. Insko
HB 1523	S.A.F.E. Mortgage Licensing Act.	Rep. Blue
SB 983	DOT Vegetation Removal Changes.	Sen. Jenkins

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 2, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Henry M Lancaster	UMCNC
Jon Lubecky	Shadow Wounded
Lisa Martin	NC Home Builders
DAVID BARNES	Poyner Spruill
Jim Blackburn	NC Association of County Commissioners
Page Meyer	NC League of Munic.
Johanna Reese	DOT
CASANDRA WHITE	NCAIC
JOHN GOODMAN	NC CHAMBER

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 2, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ESC
Tracy Kimbrell	Pancer Poe
[signature]	Poyner & Spruill
[signature]	NCHIRP
Jean Holliday	NCDOI
Lauren Whaley	NCCCL
[signature]	5 Hargett Street, Raleigh, NC
Kristina Foard	NC Nursing Association

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 2, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	MWC
Angela Velez	NCDOJ - AG's Office
Augustus Willis	NC DOJ AG's OFFICE
Tina Cucci	1725 TW Alexander Dr #505 Durham NC 27703
Jaime Tzilvelis	1725 TW Alexander Dr. #1404 DURHAM, NC 27703
	JD, AL, PA
Dirk Crafton	atty.
McNeil Cleaton	for the Comm Bks.
John Shaw	PCS
Cameron Hendley	Electrolux of nc
Caroline Hoan	Gov's Office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 2, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Robert Paschal	Young Moore
	MWC
Steve Brewer	Embarq
	NCAHP
Meghan Baumer	NBO / Chair
Will Corbett	NCCOB
Jeff Mixon	Cintas
Rose Williams	NCDOJ

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Brian May	Environment NC
Don Bridger	USA Roofing Systems Inc. Emerald Isle N.C.
JAMES ERVIN	THE AMERICAN LEGION NASHVILLE N.C
Jeff Joyner	The American Legion Rockingham, N.C.
Roger Knight	Wyrick Robbins / Waste Indus.
ZEB ALLEY	NMRS
Mark Fleming	BCBSNC
Thom Moore	Waste Industries
[illegible]	NMSS-NC
DAVE Simpson	GACC
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 2, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Katrina English	NCCN
Paul Stock	NCBA
Ally MacFadyen	FCF
Nathan Batts	NCBA
David Spotton	State Farm
Debra DeCamillis	UNC. IOG
Paul Sherman	AFB
Gretchen Argeock	NC DOA
Christy Agner	DOA
Margaret Hartzell	Environment North Carolina
Annie Schetinnikova	Environment North Carolina

HOUSE BILL 912

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/7/09

Short Title: Encourage Use of Military Veteran Contractors. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE STATE AND LOCAL GOVERNMENT TO USE MILITARY VETERAN CONTRACTORS.

The General Assembly of North Carolina enacts:

PART I. CREATE MILITARY VETERAN BUSINESS PARTICIPATION GOALS FOR PUBLIC CONTRACTS

SECTION 1.(a) G.S. 143-48 reads as rewritten:

"**§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped ~~contractors, and women contractors;~~contractors, women contractors, and military veteran contractors; purpose; required annual reports.**

(a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped ~~contractors, and women contractors~~contractors, women contractors, and military veteran contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped ~~contractors, and women contractors~~contractors, women contractors, and military veteran contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. – Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services, every local school administrative unit, and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the ~~department~~ Department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business ~~enterprises and~~enterprises, what percentage from nonprofit work centers for the blind and the severely ~~disabled.~~disabled, and what percentage from military veteran contractors. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide

instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this subsection, a business in one of the categories above means one:
  a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
  b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
  a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
  b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
  c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a. through d.

(3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

(4) A veteran contractor is a contractor that is a military veteran or a veteran business, as those terms are defined in G.S. 143-128.5(f).

(c) The Department of Administration shall compile information on small and medium-sized business participation in State contracts subject to this Article and report the information as provided in subsection (d) of this section. The report shall analyze (i) contract awards by business size category, (ii) historical trends in small and medium-sized business participation in these contracts, and (iii) to the extent feasible, participation by small and medium-sized businesses in the State procurement process as dealers, service companies, and other indirect forms of participation. The Department may require reports on contracting by business size in the same manner as reports are required under subsection (b) of this section.

(d) The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

(d1) Repealed by Session Laws 2007-392, s. 1, effective October 1, 2007.

(e) In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from

the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees."

SECTION 1.(b) Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-128.5. Military veteran business participation goals.**

(a) The State shall have a verifiable ten percent (10%) goal for participation by military veteran businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State. A local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars ($100,000) or more, shall have a verifiable ten percent (10%) goal for participation by veteran businesses in the total value of the work.

Each city, county, or other local public entity shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by veteran businesses in the total value of work for building projects.

Each entity required to have verifiable percentage goals under this subsection shall make a good faith effort to recruit veteran participation in accordance with this section or G.S. 143-131(c), as applicable.

(b) A public entity shall establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for veteran businesses to submit successful bids or proposals for the contracts for building projects. Public entities shall make good faith efforts as set forth in subsection (e) of this section. Public entities shall require contractors to make good faith efforts to meet the veteran business participation goal established in subsection (a) of this section. Each first-tier subcontractor on a construction management at-risk project shall comply with the requirements applicable to contractors under this subsection.

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at-risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128(a1) shall identify on its bid the veteran businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (b) of this section and the total dollar value of the bid that will be performed by the veteran businesses. A contractor, including a first-tier subcontractor on a construction manager at-risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

(1) Within the time specified in the bid documents, either:

a. An affidavit that includes a description of the portion of work to be executed by veteran businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith effort; or

b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of veteran businesses for participation in the contract.

(2) Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project.

Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

(d) No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:

(1) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or

(2) With the approval of the public entity for good cause.

Good faith efforts as set forth in G.S. 143-131(c) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(c).

(e) Before awarding a contract, a public entity shall do the following:

(1) Develop and implement a veteran business participation outreach plan to identify veteran businesses that can perform public building projects and implement outreach efforts to encourage veteran business participation in these projects to include education, recruitment, and interaction between veteran businesses and nonveteran businesses.

(2) Attend the scheduled prebid conference.

(3) Utilize other media, as appropriate, likely to inform potential veteran businesses of the bid being sought.

(f) As used in this section:

(1) The term 'veteran business' means a business:

a. In which at least fifty-one percent (51%) is owned by one or more military veterans, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more military veterans; and

b. Of which the management and daily business operations are controlled by one or more of the military veterans who own it.

(2) The term 'military veteran' means a person who is a citizen or lawful permanent resident of the United States and who served in the armed forces of the United States or the North Carolina National Guard, served a minimum of 180 days, and who was discharged or released therefrom with an honorable discharge or a general discharge under honorable conditions.

(g) Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from veteran business contractors or veteran business subcontractors who do not submit the lowest responsible, responsive bid or bids.

(h) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.

(i) Except as provided in subsections (a), (f), (g), and (h) of this section, this section shall only apply to building projects costing three hundred thousand dollars ($300,000) or more. This section shall not apply to the purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work that must be performed at the construction site.

(j) Each public or private entity that is subject to this section shall report annually to the Department of Administration on its compliance with the requirements of this section. The Department of Administration shall provide instructions to the reporting entities concerning the manner and date of reporting. The Secretary of the Department of Administration shall make reports annually to the Joint Legislative Commission on Governmental Operations on information reported pursuant to this subsection.

(k) If the death of a military veteran causes a business to be less than fifty-one percent (51%) owned by one or more military veterans, the surviving spouse of the military veteran who acquires ownership rights in the business shall, for the period set forth in this subsection, be treated as if the surviving spouse were the veteran for the purpose of maintaining the status of the business as a veteran business. This period shall begin on the date the veteran dies and end on the earliest of the following:

(1) The date on which the surviving spouse remarries.

(2) The date on which the surviving spouse relinquishes an ownership interest in the business.

(3) The date that is 10 years after the veteran's death."

SECTION 1.(c) G.S. 143-131 is amended by adding a new subsection to read:

"(c) All public entities shall solicit military veteran participation in contracts for the erection, construction, alteration, or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit military veteran business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of military veteran business participation on each project, and documentation of efforts to recruit military veteran participation shall be reported to the Department of Administration, Division of Veterans Affairs, upon the completion of the project."

PART II. CONFORMING CHANGES

SECTION 2.(a) G.S. 18C-151(a)(4) reads as rewritten:

"(4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and ~~G.S. 143-128.3.~~G.S. 143-128.3, and with the veteran participation goals of G.S. 143-128.5."

SECTION 2.(b) G.S. 113-315.36 reads as rewritten:

"**§ 113-315.36. Building contracts.**

(a) The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

(1) Repealed by Session Laws 1999-368, s. 1.

(2) Except for ~~G.S. 143-128.2,~~G.S. 143-128.2 and G.S. 143-128.5, Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contract.

(3) G.S. 143-341(3) does not apply to plans and specifications for construction or renovation authorized by the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contract to which this exemption is applied. The quarterly report required by this subsection shall specifically include information regarding the

Authority's compliance with the provisions of ~~G.S. 143-128.2.~~G.S. 143-128.2 and G.S. 143-128.5."

SECTION 2.(c) G.S. 116-31.11(f) is amended by adding a new subdivision to read:

"(5) Whether the person or business awarded a contract under this section meets the definition of 'veteran business' or 'military veteran' as defined in G.S. 143-128.5(f)."

SECTION 2.(d) G.S. 116D-4 reads as rewritten:

"**§ 116D-4. ~~Minority and~~Minority, veteran, and historically underutilized business participation.**

(a) Minority Business and Veteran Business Participation. – The goals set by G.S. 143-128 and G.S. 143-128.5 for participation in projects by minority and veteran businesses apply to projects funded by the proceeds of bonds or notes issued under this section. The following State agencies shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority and veteran businesses in these projects. The State Construction Office, Department of Administration, shall monitor compliance with regard to projects funded by the proceeds of university improvement general obligation bonds and notes and special obligation bonds and notes; the Board of Governors of The University of North Carolina shall provide the State Construction Office any information required by the State Construction Office to monitor compliance. The Community Colleges System Office shall monitor compliance with regard to projects funded by the proceeds of community college general obligation bonds and notes.

(b) Participation in Providing Professional Services. – The Department of State Treasurer shall provide contracting opportunities for historically underutilized businesses in providing professional services in connection with the issuance of bonds and notes authorized by this section. As used in this subsection, the term "historically underutilized business" means a business described in G.S. 143-48. The Department of State Treasurer shall strive to increase the amount of legal, financial, and other professional services acquired by it from historically underutilized businesses. With the assistance of the Office for Historically Underutilized Businesses in the Department of Administration, the Department of State Treasurer shall set objectives for contracting with these businesses, identify and eliminate barriers or constraints that may restrict these businesses from contracting with the Department, and develop a plan for meeting its objectives. The Department of State Treasurer shall report quarterly to the Office for Historically Underutilized Businesses on its progress in carrying out the requirements of this subsection."

SECTION 2.(e) G.S. 143-128.1 reads as rewritten:

"**§ 143-128.1. Construction management at risk contracts.**

(a) For purposes of this section and G.S. 143-64.31:

(1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.

(3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.

(4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The prequalification criteria shall be determined by the public entity and the construction manager at risk to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the public entity. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 and G.S. 143-128.5 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to ~~G.S. 143-128.2.~~G.S. 143-128.2 and military veteran businesses for participation in contracts pursuant to G.S. 143-128.5. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with ~~G.S. 143-128.2,~~G.S. 143-128.2 and G.S. 143-128.5, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(f1).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes."

SECTION 2.(f) G.S. 143-129.4 reads as rewritten:

"**§ 143-129.4. Guaranteed energy savings contracts.**

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are not governed by this Article but instead are governed by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of ~~G.S. 143-128.2~~G.S. 143-128.2, 143-128.5, and ~~G.S.~~ 143-135.3."

SECTION 2.(g) G.S. 143-135.5(a) and the catch line of G.S. 143-135 read as rewritten:

"**§ 143-135.5. State policy; cooperation in promoting the use of small, minority, physically ~~handicapped and women~~handicapped, women, and military veteran contractors; purpose.**

(a) It is the policy of this State to encourage and promote the use of small, minority, physically ~~handicapped and women~~handicapped, women, and military veteran contractors in State construction projects. All State agencies, institutions and political subdivisions shall

cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of small, minority, physically ~~handicapped and women~~handicapped, women, and military veteran contractors in achieving the purpose of this Article, which is the effective and economical construction of public buildings."

SECTION 2.(h) G.S. 143-135.26(9)b1. reads as rewritten:

"b1. The entity includes in its bid or proposal requirements that the contractor will file a plan for making a good faith effort to reach the minority participation goal set out in ~~G.S. 143-128.2.~~G.S. 143-128.2 and the veteran business participation goal set out in G.S. 143-128.5."

SECTION 2.(i) G.S. 147-33.97 reads as rewritten:

"**§ 147-33.97. Information technology procurement policy; reporting requirements.**

(a) Policy. – In order to further the policy of the State to encourage and promote the use of small, minority, physically ~~handicapped, and women~~handicapped, women, and veteran contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically. ~~handicapped, and women~~ handicapped, women, and veteran contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(a1) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(a2) The State Chief Information Officer shall retain the statements required by subsection (a1) of this section regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.

(b) Reporting. – Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office."

SECTION 2.(j) G.S. 148-37.2(j) reads as rewritten:

"(j) Minority Business Participation. – G.S. 143-128.2 ~~applies~~ and G.S. 143-128.5 apply to the Projects authorized in this section."

SECTION 3. This act is effective when it becomes law and applies to bids solicited on or after that date.

HOUSE BILL 912:
Encourage Use of Military Veteran Contractors

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2009
Introduced by:	Reps. Killian, Sutton, Parmon, McElraft	**Prepared by:**	Wendy Graf Ray
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 912 amends the State purchase and contract law to encourage the use of military veteran contractors and requires the State to have a verifiable 10% goal for participation by military veteran businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State.***

CURRENT LAW:

State law sets forth a policy on encouragement and promotion of the following entities with regard to State purchasing: small contractors, minority contractors, and physically handicapped contractors. Business participation goals for State building projects are established for minority businesses.

BILL ANALYSIS:

PART I. CREATE MILITARY VETERAN BUSINESS PARTICIPATION GOALS FOR PUBLIC CONTRACTS of House Bill 912 does the following:

Section 1(a) adds military veteran contractors to G.S. 143-48 which provides the state policy of encouraging and promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors.

Section 1(b) creates a new G.S. 143-128.5, regarding military veteran business participation goals. This section provides for the following:

- Requires the State to have a verifiable 10% goal for participation by a military veteran business in the total value of work for each State building project, including building projects by a private entity on a facility to be leased or purchased by the State. The 10% goal is also required for a local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, by a private entity on a facility to be leased or purchased by the local government unit where the project cost is $100,000 or more. After a notice and public hearing, cities, counties, or other local public entities must adopt an appropriate verifiable percentage goal for participation by veteran businesses in the total value of work for building projects.
- Provides the following definitions:
    - "Veteran business" is a business
        - In which at least 51% is owned by one or more military veterans, or in the case of a corporation, in which at least 51% of the stock is owned by one or more military veterans; and
        - Of which the management and daily business operations are controlled by one or more of one or more of military veterans who own it.
    - "Military Veteran" means a person who is a citizen or lawful permanent resident of the United States and who served in the armed forces of the United States or the North Carolina National Guard, served a minimum of 180 days, and who was discharged or released therefrom under conditions other than dishonorable.

- Requires public entities to make good faith efforts meet the veteran business participation goals established in G.S. 143-128.5(a) and to develop outreach plans and other means to inform potential veteran businesses of the bids being sought as provided in G.S. 143-128.5(e).
- Outlines the process for identification of a military veteran business.
- Provides that except for the goals in G.S. 143-128.5(a), the terms in G.S. 143-128.5(f), language allowing purchases from lowest bidder G.S. 143-128.5(g), and public record requirements in G.S. 143-128.5(h), the requirements of G.S. 143-128.5 apply only to building projects costing $300,000 or more. G.S. 143-128.5 does not apply to the purchase and erection of prefabricated or relocatable buildings or portions thereof.
- Specifies reporting requirements.

Section 1(c) amends G.S. 143-131 to require solicitation of military veteran participation in informal bids.

PART II makes conforming changes to other statutes

EFFECTIVE DATE: House Bill 912 would become effective when it becomes law and applies to bids solicited on or after that date.

Hal Pell and Theresa Matula substantially contributed to this summary.

H912-SMSU-96(e3) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 912

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

H912-AMD-17 [v.2]

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

Date _____,2009

Senator Goodall

moves to amend the bill on page 3, lines 30 through 33, by deleting the phrase " identify on its bid the veteran businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (b) of this section and the total dollar value of the bid that will be performed by the veteran businesses." and substituting the phrase "submit an affidavit listing the good faith efforts it has made pursuant to subsection (b) of this section."; and

on page 3, lines 48 through 49, by rewriting the lines to read:

"(2) Within 30 days after award of the contract, all of the following:

a. A list of all identified subcontractors that the contractor will use on the project.

b. A list of all veteran businesses that the contractor will use on the project.

c. The total dollar value of the bid that will be performed by veteran businesses."; and

on page 8, lines 37 through 38, by rewriting the lines to read:

"**SECTION 3.** This act becomes effective January 1, 2010, and applies to bids solicited on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 182
Committee Substitute Favorable 4/1/09
Committee Substitute Favorable 4/13/09

Short Title: Traffic Calming Devices/Res. Subdivisions. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PLACEMENT OF TRAFFIC TABLES OR TRAFFIC CALMING DEVICES ON THOSE PORTIONS OF STATE ROADS WITHIN A RESIDENTIAL SUBDIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-102.8. Subdivision streets; traffic calming devices.**

The Department shall establish policies and procedures for the installation or utilization of traffic tables or traffic calming devices erected on State-maintained subdivision streets adopted by the Department, pursuant to G.S. 136-102.6, if all of the following requirements are met:

(1) A traffic engineering study has been approved by the Department detailing types and locations of traffic calming devices.

(2) Installation and utilization of traffic tables or traffic calming devices is within one of the following areas:

a. A subdivision with a homeowners association.

b. A neighborhood in which the property owners have established a contractual agreement outlining responsibility for traffic calming devices installed in the neighborhood.

(3) The traffic tables or traffic calming devices are paid for and maintained by the subdivision homeowners association, or its successor, or pursuant to a neighborhood agreement.

(4) The homeowners association has the written support, for the installation of each traffic table or traffic calming device approved by the Department pursuant to this section, of at least seventy percent (70%) of the member property owners, or the neighborhood agreement is signed by at least seventy percent (70%) of the neighborhood property owners.

(5) The homeowners association, or neighborhood pursuant to its agreement, posts a performance bond with the Department sufficient to fund maintenance or removal of the traffic tables or calming devices, if the homeowners association, or neighborhood pursuant to its agreement, fails to maintain them, or is dissolved. The bond shall remain in place for a period of three years from the date of installation."

SECTION 2. This act becomes effective October 1, 2009, and applies to traffic tables and traffic calming devices installed on or after that date.

HOUSE BILL 182:
Traffic Calming Devices/Res. Subdivisions

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2009
Introduced by:	Reps. Dollar, Avila	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 182 allows the placement of traffic tables or traffic calming devices on State-maintained subdivision streets if the devices are paid for and maintained by a homeowner's association or pursuant to a neighborhood contractual agreement.

CURRENT LAW: The Department of Transportation has general power to control obstructions on State roads, under G.S.136-18.

BILL ANALYSIS: House Bill 182 authorizes the installation or utilization of traffic tables or traffic calming devices on State-maintained subdivision streets if all of the following requirements are met:

- A traffic engineering study has been approved by the Department detailing types and locations of traffic calming devices.
- Installation and utilization of traffic tables or traffic calming devices is within a subdivision with a homeowner's association, or a neighborhood in which the property owners have established a contractual agreement outlining responsibility for traffic calming devices installed in the neighborhood.
- The traffic tables or traffic calming devices are paid for and maintained by the subdivision homeowner's association, or its successor, or pursuant to a neighborhood agreement.
- The homeowner's association has the written support of at least seventy percent (70%) of the member property owners for the installation of each table or device, or the neighborhood agreement is signed by at least seventy percent (70%) of the neighborhood property owners.
- The homeowner's association, or neighborhood pursuant to its agreement, posts a performance bond with the Department sufficient to fund maintenance or removal of the traffic tables or calming devices if necessary. The bond would have to remain in place for three years from the date of installation.

EFFECTIVE DATE: This act would become effective October 1, 2009, and apply to traffic calming devices installed on or after that date.

BACKGROUND: Traffic calming devices include speed bumps, speed humps (wider than speed bumps) and traffic tables (very wide speed humps that are flat on top). All are intended to slow traffic.

H182-SMSU-93(e3) v1

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 825:
Garbage Collection Trucks Parking on Highways

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2009
Introduced by:	Rep. Owens	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

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, with 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: The act would become effective October 1, 2009, and apply 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."

Giles Perry, counsel to the House Transportation Committee, substantially contributed to this summary.

H825-SMSU-94(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 838*
Committee Substitute Favorable 4/8/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H838-CSSU-54 [v.1]

6/1/2009 4:04:11 PM

Short Title: Create Exemption/Size-Weight for Sage Haulers. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE AN EXEMPTION FOR SIZE AND WEIGHT RESTRICTIONS OF HAULERS OF SAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116(d) reads as rewritten:

"(d) Maximum Length. – The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(1) Except as otherwise provided in this subsection, a single vehicle having two or three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.

(2) Trucks transporting unprocessed cotton from farm to ~~gin~~ gin, or unprocessed sage from farm to market shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.

(3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors."

SECTION 2. G.S. 20-118(k) reads as rewritten:

"(k) ~~From September 1 through March 1 of each year, a~~ A vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton ~~gin~~ gin, or sage to market, may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 50,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures."

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

HOUSE BILL 838:
Create Exemption/Size-Weight for Sage Haulers

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 2, 2009
Introduced by:	Rep. Spear	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Second Edition H838-CSSU-54		Committee Counsel

SUMMARY: House Bill 838 would create an exemption to maximum length and weight restrictions for vehicles transporting unprocessed sage from farm to market.

[As introduced, this bill was identical to S654, as introduced by Sen. Jones, which is currently in Senate Commerce.]

CURRENT LAW: Under general law applicable to motor vehicles, a vehicle with two or three axles may not exceed 40 feet in length.

The maximum tandem-axle weight for a vehicle operating without a special permit is 38,000 lbs. However, the Department of Transportation is authorized to establish light-traffic roads where the maximum weight is restricted further when the road is inadequate to carry and will be injuriously affected by heavier vehicles.

Under current law, there is an exception to those length and weight restrictions for vehicles transporting unprocessed cotton from farm to gin. They can be up to 50 feet in length and up to 50,000 lbs. and may operate on light-traffic roads from point of origin to the nearest State-maintained road that is not a light-traffic road. The weight exception only applies from September 1 through March 1 of each year.

BILL ANALYSIS: House Bill 838 would create an exception to the current law on length of vehicles, increasing the maximum length of a vehicle transporting sage from farm to market from 40 feet to 50 feet.

The bill would also create an exception to the current law on weight of vehicles, increasing the maximum tandem-axle weight of a vehicle transporting sage from farm to market from 38,000 lbs. to 50,000 lbs. In addition, the vehicle would be able to operate on roads designated as light-traffic roads only from the vehicle's point of origin on a light-traffic road to the nearest State road that is not a light-traffic road.

The bill would create the same exceptions for vehicles transporting sage from farm to market as the exceptions that currently exist for vehicles transporting unprocessed cotton from farm to gin, except that the bill also deletes existing language that makes the weight exception applicable only from September 1 through March 1 of each year. Under the bill, the weight exception for both sage and cotton would apply all year.

EFFECTIVE DATE: The act would be effective when it becomes law.

H838-SMSU-92(CSSU-54) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 964
Committee Substitute Favorable 4/28/09

Short Title: Insurance Guaranty Association Amendments. (Public)

Sponsors:

Referred to:

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DISCRETIONARY POWERS OF THE INSURANCE GUARANTY ASSOCIATION TO ALLOW IT TO CONTRACT AS A SERVICING FACILITY FOR OTHER ENTITIES AND CONFORM THE ASSOCIATION'S STATUTORY IMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-48-35 reads as rewritten:

"**§ 58-48-35. Powers and duties of the Association.**

...

(b) The Association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the Association.

(2) Borrow funds necessary to effect the purposes of this Article in accord with the plan of operation.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Article.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this Article.

(6) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(7) Be designated or may contract as a servicing facility for any entity which may be recommended by the Association's board of directors and approved by the Commissioner of Insurance."

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

HOUSE BILL 964:
Insurance Guaranty Association Amendments

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 1, 2009
Introduced by:	Reps. Dockham, Braxton	**Prepared by:**	Tim Hovis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 964 would allow the North Carolina Insurance Guaranty Association to contract or be designated to handle the adjustment of claims for another entity, upon the recommendation of the Association's Board and the approval of the Commissioner of Insurance.

CURRENT LAW:

The North Carolina Insurance Guaranty Association (Association) is a nonprofit, unincorporated legal entity created by statute (See Article 48 of Chapter 58 of the General Statutes.) It is made up of all insurers in the State that offer property and casualty insurance including that for automobiles and workers' compensation.

The Association is required to cover claims of insureds in the event the insurer becomes insolvent. The obligation is the amount of each covered claim over $50, but not to exceed $300,000, unless the covered claim is under a policy of workers' compensation, in which case the Association must pay the full amount of the covered claim. The Association also assists in the detection and prevention of insurer insolvencies, and assesses the cost of such protection among insurers.

BILL ANALYSIS:

House Bill 964 adds a new power to the Association's statutory authority. The bill authorizes the Association to be designated or to contract as a servicing facility for any entity when recommended by the Association's board of directors and approved by the Commissioner of Insurance.

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

Kory Goldsmith and Karen Cochrane-Brown, Staff Attorneys, substantially contributed to this summary.

H964-SMRG-57(e2) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 964

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

H964-ARG-26 [v.1]

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

Date _____, 2009

Senator _____

moves to amend the bill on page 1, lines 4-5,
by rewriting the lines to read:
"FACILITY FOR OTHER ENTITIES."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 1124

Short Title:	UI/Severely Disabled Veterans.	(Public)
Sponsors:	Representatives Insko; E. Floyd, Hughes, Lucas, and Parmon.	
Referred to:	Homeland Security, Military, and Veterans Affairs, if favorable, Judiciary I.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT RELATING TO UNEMPLOYMENT INSURANCE COMPENSATION FOR CERTAIN SEVERELY DISABLED VETERANS DISCHARGED FOR ACTS OR OMISSIONS ATTRIBUTED TO A SERVICE-CONNECTED DISABILITY.

Whereas, the public policy of this State declares economic insecurity due to unemployment as a serious menace to the health, morals, and welfare of the people of this State; and

Whereas, the State recognizes the great sacrifice veterans have endured to protect this country and State; and

Whereas, veterans with service-connected disabilities rated above 60% face great challenges in employment; and

Whereas, veterans with severe service-connected disabilities who wish to work should be encouraged as a matter of State policy to seek gainful employment; and

Whereas, veterans with severe service-connected disabilities may be terminated for cause, through no fault of their own; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(8b) 'Severely disabled veteran' means an honorably discharged veteran of the armed forces of the United States who has received a disability rating from the United States Department of Veterans Affairs that meets the disability percentage requirements set forth in 38 CFR 4.16, as amended, if the veteran (i) has a right to apply to the United States Department of Veterans Affairs for compensation based on total disability or individual unemployability, and (ii) has elected to work instead of assert the right to receive compensation from the United States Department of Veterans Affairs based on total disability or individual unemployability."

SECTION 2. G.S. 96-14(2) reads as rewritten:

"(2) For the duration of ~~his~~ the 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 he or she was discharged for misconduct connected with ~~his~~ the 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~~ an 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~~ the 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. This phrase does not include discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

SECTION 3. G.S. 96-14 is amended by adding a new subdivision to read:

"(2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time."

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

HOUSE BILL 1124:
UI/Severely Disabled Veterans

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 1, 2009
Introduced by:	Rep. Insko	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act amends the statutes providing for unemployment insurance benefits by adding a definition for a "severely disabled veteran" into the Article's definition section, and by amending the disqualification provisions relating to disabled veterans. This act is effective when it becomes law.***

CURRENT LAW: *G.S. 96-14* provides that an individual shall be disqualified for benefits for the duration of the person's unemployment (or shorter, in certain limited instances) if the person's situation fits one of the provided circumstances.

- Discharge due to misconduct

"[C]onduct 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."

- Substantial fault

"[A]cts 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."

BILL ANALYSIS: House Bill 1124 would add the following definition for 'severely disabled veteran':

- An honorably discharged veteran of the armed forces of the United States who
- has received a disability rating from the US Department of Veterans Affairs meeting disability percentages set forth in the Code of Federal Regulations (38 CFR 4.16), if the veteran:
  - has a right to apply for compensation based on total disability or individual unemployability, and
  - has elected to work rather than receive this compensation from the Department of Veterans Affairs.

The bill would then specify that discharge or employer-initiated separation of individuals fitting this definition would not be included within the 'misconduct for work' or 'substantial fault' discharge provisions, if the discharge or separation was, "...for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

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

Ben Popkin and Hal Pell, Staff Attorneys, substantially contributed to this summary.

H1124-SMRG-58(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1294
Committee Substitute Favorable 5/5/09
Third Edition Engrossed 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1294-CSRG-34 [v.1]

6/1/2009 6:07:36 PM

Short Title: NC Risk Pool Premiums/Notice Requirements. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA HEALTH INSURANCE RISK POOL TO PROVIDE PREMIUM SUBSIDIES IF FUNDS ARE AVAILABLE AND TO REQUIRE INSURERS TO NOTIFY APPLICANTS FOR HEALTH INSURANCE COVERAGE ABOUT THE EXISTENCE OF THE POOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-180(e) reads as rewritten:

"(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director acting upon the approval or authorization of the Board, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued.

(3) Take legal action as necessary to:

a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Pool as a result of mistake of fact or law.

d. Recover other amounts due the Pool.

(4) Establish rates and rate schedules in accordance with this Part.

(4a) Provide premium subsidies if funds are available for individuals with incomes up to three hundred percent (300%) of the federal poverty guidelines and the Board deems it is fiscally prudent to do so.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

(7) Establish policies, conditions, and procedures for reinsuring risks of participating health insurers, as defined in G.S. 58-68-25(a), desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(8) Employ and fix the compensation of employees.

(9) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.

(10) Provide for reinsurance for the Pool.

(11) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.

(12) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, health and wellness programs including a smoking cessation initiative, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.

(13) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

(14) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-276. Notice relating to the North Carolina Health Insurance Risk Pool.**

(a) An insurer shall provide a written notice of the existence of the North Carolina Health Insurance Risk Pool to an applicant for individual health insurance coverage upon the insurer making a determination the applicant is eligible for coverage by the Pool as provided in G.S. 58-50-195(a)(1) or (2).

(b) The notice required in subsection (a) of this section shall be provided to an applicant no later than 10 business days after the insurer reaches a determination under subsection (a) of this section. An insurer may provide a single notice relating to multiple applicants located at a single address provided the notice lists the name of each individual affected separately.

(c) The Commissioner may adopt rules to implement this section, including rules establishing the language, content, format, and methods of distribution of the notice required by this section.

(d) For purposes of this section:

(1) "Applicant" means any person who seeks to contract for individual health insurance coverage, including any dependent for which application is made and about whom an independent underwriting decision is made by an insurer.

(2) "Health insurance coverage" is as defined in G.S. 58-50-175(10).

(3) "Insurer" is as defined in G.S. 58-50-175(13)."

SECTION 3. Section 1.4 of S.L. 2007-532 reads as rewritten:

"**SECTION 1.4.** Notwithstanding G.S. 58-50-210(a), individuals enrolling in the Pool within ~~six months~~12 months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 4. Section 2 of this act applies to applications for health insurance coverage made on or after October 1, 2009. The remainder of this act is effective when it becomes law.

HOUSE BILL 1294:
NC Risk Pool Premiums/Notice Requirements

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 1, 2009
Introduced by:	Rep. Dockham	**Prepared by:**	Tim Hovis
Analysis of:	PCS to Third Edition H1294-CSRG-34		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1294 would allow the Board of Directors of the High Risk Insurance Pool to provide premium subsidies to individuals with income levels up to 300% of the federal poverty guidelines, if funds are available. The bill also requires insurers to notify applicants for health insurance coverage about the existence of the High Risk Insurance Pool upon making a determination that the individual is eligible for coverage by the Pool and increases the time from 6 to 12 months following the Pool's first enrollment during which applicants are eligible for shorter preexisting condition waiting period of 6 months.***

CURRENT LAW: **Section 1** of the bill adds language granting the Board the authority to provide premium subsidies to individuals with income levels up to 300% of the federal poverty guidelines, if funds are available. **Section 2** requires an insurer to provide written notice to an individual about the Pool upon a determination by the insurer that the applicant is eligible because he or she has been rejected coverage or offered coverage that is limited for certain high-risk conditions. There is no current requirement that insurers notify applicants for health insurance coverage of the existence of the High Risk Insurance Pool. **Section 3** increases the time from 6 months to 12 months from the Pool's first enrollment during which an individual enrolled in the Pool is subject to a 6 month preexisting condition waiting period. After that time, the preexisting condition exclusion is 12 months from enrollment.

EFFECTIVE DATE: The notice requirement in Section 2 of the bill applies to applications received on or after October 1, 2009. The remainder of the bill is effective when it becomes law.

The 2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia	
Persons in family	**Poverty guideline**
1	$10,830
2	14,570
3	18,310
4	22,050
5	25,790
6	29,530
7	33,270
8	37,010
For families with more than 8 persons, add $3,740 for each additional person.	

**This summary was substantially contributed to by Ms. Kory Goldsmith, Attorney, Research Division.*

H1294-SMRG-61(CSRG-34) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1284 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Stam

1 moves to amend the bill on page 1, line 25
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between the word "if" and the
4 word "funds" the words "federal grant".
5
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SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1392
Second Edition Engrossed 4/21/09
Committee Substitute Favorable 5/5/09

Short Title: NC Risk Pool Changes/Out-of-State Services. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA HEALTH INSURANCE RISK POOL TO NEGOTIATE RATES FOR SERVICES PROVIDED TO PERSONS COVERED UNDER THE POOL BY OUT-OF-STATE PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-190(d) reads as rewritten:

"**§ 58-50-190. Risk Pool rates and policy forms.**

...

(d) ~~Provider~~ Except as otherwise provided in this subsection for services rendered outside of North Carolina, provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers under the Medicare Program for those services covered by Medicare. The Board shall establish reimbursement rates for services for which Medicare has not established an allowed rate. Providers rendering medical care to an insured shall accept payment of the amount established under this subsection, including any applicable deductible, coinsurance, or co-payment amounts, as payment in full for services rendered. For providers rendering emergency services to an insured outside this State, the Pool is authorized to negotiate and settle such claims at reimbursement rates that may exceed the rates allowed under the Medicare program.

...."

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

HOUSE BILL 1392:
NC Risk Pool Changes/Out-of-State Services

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 1, 2009
Introduced by:	Rep. Insko	**Prepared by:**	Tim Hovis*
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1392 would authorize the North Carolina Health Insurance Risk Pool to negotiate and settle claims for Medicare-covered emergency services provided outside North Carolina to an insured. The negotiated reimbursement rate may exceed the rates allowed for those services under Medicare.***

CURRENT LAW: Subsection (d) of G.S. 58-50-190 "Risk Pool rates and policy forms" limits provider reimbursement rates under Pool coverage to "...the rates allowed for providers under the Medicare Program for those services covered by Medicare." The Board of Directors of the Pool may establish rates for services for which Medicare has not established an allowed rate.

When individuals insured by the High Risk Insurance Pool require out-of-state emergency services, the providers can bill the Pool for up to the Medicare rate for the service, and also bill the insured for any remaining balance. The Pool has no current authority to pay any portion of the balance or to negotiate a reduction in the balance.

BILL ANALYSIS: House Bill 1392 would amend G.S. 58-50-190(d) to authorize the Pool to negotiate and settle claims at reimbursement rates that may exceed Medicare rates, for emergency services provided to Pool-insured individuals outside of North Carolina.

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

BACKGROUND: The North Carolina Health Insurance Risk Pool was created in 2007 and began offering coverage on January 1, 2009 for the purpose of providing "...affordable, individual health insurance coverage for North Carolinians who do not have access to an employer health plan and face higher premiums due to a pre-existing medical condition."[1]

Ben Popkin and Kory Goldsmith, Staff Attorneys, substantially contributed to this summary.

H1392-SMRG-60(e3) v2

[1] http://www.inclusivehealth.org/pages/6/About-Us/

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1523
Committee Substitute Favorable 4/30/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1523-CSROf-53 [v.1]

6/1/2009 8:38:33 PM

Short Title: S.A.F.E. Mortgage Licensing Act. (Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

Whereas, the General Assembly finds that activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this State's consumers, this State's economy, and the neighborhoods and communities of this State, and the housing and real estate industry; and

Whereas, North Carolina has licensed mortgage loan originators and companies that employ them since 2002, and such licensure has been essential for the protection of the citizens of the State and the stability of the State's economy; and

Whereas, this legislation is necessary to bring North Carolina's mortgage lending laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 19A of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"The Secure and Fair Enforcement Mortgage Licensing Act.

"**§ 53-244.010. Title.**

This act may be cited as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act."

"**§ 53-244.020. Purpose and construction.**

(a) Purpose. – A primary purpose of this Article is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the General Assembly establishes within this Article an effective system of supervision and enforcement of the mortgage lending industry by giving the Commissioner of Banks broad administrative authority to administer, interpret, and enforce this Article and adopt rules implementing this Article in order to carry out the intentions of the General Assembly.

(b) Construction. – It is the intent of the General Assembly that provisions of this Article be liberally construed to effect the purposes stated or clearly encompassed by the Article.

"§ 53-244.030. Definitions.

For purposes of the Article, the following definitions apply:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq.), as amended from time to time.

(2) "Audited Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting financial condition of the licensee as of the date specified in the statement.

(2a) "Banking Commission" means the North Carolina Banking Commission. For the purpose of complying with this Article by credit unions, Banking Commission means the North Carolina Credit Union Commission.

(3) "Branch manager" means the individual who is assigned to, is in charge of, and is responsible for the business operations of a branch office of a mortgage broker or mortgage lender.

(4) "Branch office" means an office of a mortgage broker or mortgage lender that is separate and distinct from the mortgage broker's or lender's principal office and from which its employees engage in the mortgage business. A branch office shall not be located at an individual's home or residence.

(5) "Certified Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer or licensee as fairly and accurately reflecting the financial condition of the licensee as of the date specified in the statement.

(6) "Commissioner" means the North Carolina Commissioner of Banks and the Commissioner's designees. For the purpose of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(7) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.

(8) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.

(9) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence.

(10) "Engaging in the mortgage business" means:

a. For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an

application for a residential mortgage loan from prospective borrowers, solicit or offer to solicit a residential mortgage loan from prospective borrowers, negotiate the terms or conditions of a residential mortgage loan with prospective borrowers, issue residential mortgage loan commitments or interest rate guarantee agreements to prospective borrowers, or engage in tablefunding of residential mortgage loans, whether any such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or prospective borrowers.

b. To make or fund, or offer to make or fund, or advance funds on residential mortgage loans for compensation or gain, or in the expectation of compensation or gain.

c. To engage, whether for compensation or gain from another or on one's own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the residential mortgage loan, the residential mortgage loan servicing documents, or servicing contract, or otherwise to meet the definition of the term "servicer" in 12 U.S.C. § 2605(i)(2) with respect to residential mortgage loans.

(11) "Employee" means an individual who has an employment relationship with a mortgage broker, mortgage lender, or mortgage servicer and who is treated as a common law employee for purposes of compliance with the federal income tax laws and whose income is reported on IRS Form W-2.

(11a) "Exclusive mortgage broker" means an individual who acts as a mortgage broker exclusively for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender and who is licensed pursuant to G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage broker shall be subject to the requirements of a mortgage broker under this Article.

(12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(13) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild, or the spouse of an immediate family member. This term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(14) "Individual" means a natural person.

(15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.

(16) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this Article. Clerical or support duties may include, subsequent to the receipt of an application:

a. The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

Any person who represents to the public, through advertising or other means of communication, or provides information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be deemed to be a loan processor or underwriter under this definition.

(17) "Loss mitigation specialist" means an employee of a mortgage servicer authorized to (i) collect or receive payments, including payments of principal, interest, escrow amounts, and other amounts due on existing residential mortgage loans due and owing to the licensed lender or servicer when the borrower is in default or in reasonably foreseeable likelihood of default, (ii) work with the borrower to collect data, and (iii) make decisions necessary to modify, either temporarily or permanently, certain terms of those residential mortgage loans or to otherwise finalize collection through the foreclosure process. Such decisions shall include any change in the principal amount of the debt, the rate of annual interest charged, the term of the loan, the waiver of any fees or charges, including late charges, the deferral of payments, or any other similar matter.

(18) "Make a residential mortgage loan" means to advance funds, to offer to advance funds, to make a commitment to advance funds to a borrower under a mortgage loan, or to fund a residential mortgage loan.

(19) "Mortgage broker" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section.

(20) "Mortgage lender" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction.

(21) "Mortgage loan originator" means:

a. An individual who for compensation or gain or in the expectation of compensation or gain, whether through contact by telephone, by electronic means, by mail, or in person with prospective borrowers, either:

1. Takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan,
2. Accepts or offers to accept applications for mortgage loans,
3. Solicits or offers to solicit a mortgage loan,
4. Negotiates the terms or conditions of a mortgage loan, or
5. Issues mortgage loan commitments or interest rate guarantee agreements to prospective borrowers.

b. The term includes an individual acting solely as a loss mitigation specialist if the United States Department of Housing and Urban Development issues a guideline, rule, regulation, or interpretative letter that such individuals are loan originators as the term is defined

by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and only to the extent of such an issuance or determination.

c. The term does not include:

1. An individual engaged solely as a loan processor or underwriter;

2. A person or entity that only performs real estate brokerage activities and is licensed or registered as such in accordance with State law, unless the person or entity is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator;

3. A person or entity solely involved in extensions of credit or sale of time share instruments relating to time share plans, as that term is defined in G.S. 93A-41(9a); or

4. An individual who only informs a prospective borrower of the availability of persons engaged in the mortgage business, does not take or assist in the completion of a loan application, and does not discuss specific terms or conditions of a mortgage loan. The taking of basic preapplication information for facilitating a residential mortgage loan transaction, such as the name and contact information of the prospective borrower, the prospective borrower's own assessment of creditworthiness, desired loan types, and resources to make a down payment, but not including social security number, credit score, credit or employment history, or specific rates of a desired mortgage loan, to connect prospective borrowers to persons engaged in the mortgage business does not prevent an individual from qualifying for this exclusion.

(22) "Mortgage servicer" means a person engaged in the mortgage business who directly or indirectly engages in the mortgage business as defined in sub-subdivision c. of subdivision (10) of this section.

(23) "Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(24) "Nontraditional mortgage product" means any residential mortgage loan product other than a 30-year fixed rate mortgage.

(25) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(26) "Principal office" means a principal place of business that shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. A principal office shall not be located at an individual's home or residence.

(27) "Qualifying individual" means a person who meets the experience and other requirements of G.S. 53-244.050(b) and who agrees to be primarily

responsible for the operations of a licensed mortgage broker or mortgage lender or mortgage servicer.

(28) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under Chapter 93A of the General Statutes; and

e. Offering to engage in any activity, or act in any capacity, described in sub-subdivision a., b., c., or d. of this subdivision.

(29) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry and is an employee of:

a. A depository institution;

b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

c. An institution regulated by the Farm Credit Administration.

(30) "Residential mortgage loan or mortgage loan" means any loan made or represented to be made to a natural person or persons primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) "Residential real estate" means any real property located in this State upon which is constructed or intended to be constructed a dwelling.

(32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.

(33) "Tablefunding" means a transaction in which a person closes a residential mortgage loan in its own name but with funds provided by another and in which the loan is assigned to the mortgage lender actually providing the funds within one business day of the funding of the loan.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

"**§ 53-244.040. License and registration requirements.**

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(b) Four types of licenses are granted to entities under this Article, and it shall be unlawful for any person, other than an exempt person, to engage in the mortgage business without one of the following licenses:

(1) A mortgage broker license authorizes a person to act as a mortgage broker as defined in G.S. 53-244.030 (19);

(2) A mortgage lender license authorizes a person to act as a mortgage lender as defined in G.S. 53-244.030 (20), a mortgage broker as defined under G.S. 53-244.030 (19), and upon notice to the Commissioner, a mortgage servicer as defined in G.S. 53-244.030 (22).

(3) A mortgage servicer license authorizes a person to act only as a mortgage servicer as defined in G.S. 53-244.030 (22).

(4) An exclusive mortgage broker license authorizes a person to act as an exclusive mortgage broker as defined in G.S. 53-244.030(11a).

(c) Each mortgage loan originator and person engaged in the mortgage business must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(d) The following are exempt from all provisions of this Article except the provisions of G.S. 53-244.111:

(1) Registered mortgage loan originators as defined in G.S. 53-244.030 (29);

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual when making the family member a residential mortgage loan;

(3) Any individual seller who offers or negotiates terms and makes a residential mortgage loan secured by the dwelling that served as the selling individual's residence;

(4) An attorney licensed pursuant to Chapter 84 of the General Statutes who negotiates the terms of a residential mortgage loan on behalf of a client in the course of and incident to the attorney's representation of the client, so long as the attorney does not hold himself out as engaged in the mortgage business and is not compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator when negotiating the terms of a residential mortgage loan;

(5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of the notice of exemption filed with the Commissioner as specified in G.S. 53-244.050(g);

(6) Any officer or employee of an entity described in subdivision (5) of this subsection when acting within the scope of his or her employment; or

(7) A State or federally chartered credit union, upon filing of a notice of exemption with the Administrator of the Credit Union Division of the Department of Commerce as specified in G.S. 53-244.050(g).

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

(f) Mortgage lenders and mortgage brokers may not operate branch offices, except as permitted by this Article. Each principal office and each branch office of a mortgage broker or mortgage lender licensed under this Article shall have a branch manager who meets the experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage lender licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of branch manager for each branch. Each mortgage broker or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of the change of any branch manager.

"**§ 53-244.050. License and registration application; claim of exemption.**

(a) Applicants for a license shall apply through the Nationwide Mortgage Licensing System and Registry on a form acceptable to the Commissioner, including the following information:

(1) The applicant's name and address, including street address, mailing address, e-mail, telephone contact information, and social security number or taxpayer identification number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:

a. A description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;

b. Any conviction, within the past 10 years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business; and

c. Any felony convictions.

(5) With respect to an application for licensing as a mortgage lender, mortgage broker, or mortgage servicer, the applicant's financial condition, credit history, and business history, and, with respect to an application for licensing as a mortgage loan originator, the applicant's credit history and business history.

(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a person other than a natural person, each individual who has control of the applicant or who is the qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision.

(b) The eligibility requirements for an application for licensure under this Article are as follows:

(1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:

a. Be at least 18 years of age;

b. Have satisfactorily completed, within the three years immediately preceding the date of application, the mortgage lending prelicensing education as required under G.S. 53-244.070; and

c. Have passed, within the three years immediately preceding the date of application, the test required under G.S. 53-244.080.

(2) Each applicant for licensure as a mortgage broker or mortgage lender or mortgage servicer at the time of application shall comply with the following requirements:

a. If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

b. If the applicant is a corporation, limited liability company, general or limited partnership, association, or other group engaged in a joint enterprise, however organized, at least one of its principal officers, managers, or general partners shall have three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

c. If the applicant will be a qualifying individual or branch manager, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

(3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(11) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully completes a 16-hour residential mortgage lending course approved by the Commissioner supplementing the prelicensing education required under G.S. 53-244.070.

b. Acts exclusively as a mortgage broker and shall be an agent for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender, who:

(i) Shall be responsible for supervising the broker as required by this Article and in accordance with a plan of supervision approved by the Commissioner in the Commissioner's discretion;

(ii) Shall sign the license application of the applicant; and

(iii) Shall be jointly and severally liable with the broker for any claims arising from the broker's mortgage brokering activities.

c. Shall be compensated on a basis that is not dependent upon the interest rate, fees, or other terms of the loan brokered, provided that this sub-subdivision shall not prohibit compensation based on the principal balance of the loan.

d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products by that lender.

e. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

f. Shall meet the surety bond requirement of a mortgage broker or otherwise be covered by a surety bond provided by the mortgage lender or broker licensee or exempt mortgage lender of the lesser of five million dollars ($5,000,000) or an amount equal to or greater than the sum of the surety bond requirements for each exclusive mortgage broker supervised by the broker or lender.

(c) In connection with an application for licensing as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:

a. Independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

b. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The personal history may be obtained by the Commissioner at any time and the fingerprint information shall be furnished upon the Commissioner's request.

(4) An authorization for the Commissioner to obtain personal history or fingerprint information at any time.

(d) For the purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of the criminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(e) For the purposes of this section and in order to reduce the points of contact that the Commissioner may have to maintain for purposes of the noncriminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Justice may provide a criminal record check to the Commissioner for any person who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license as provided by this section. The Commissioner shall provide the Department of Justice, along with the request, the fingerprints of the person, any additional information required by the Department of Justice, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

(g) Except as provided by subsection (h) of this section, persons engaged in the mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify the Commissioner in order to claim and confirm the exemption and to facilitate the referral of consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a claim of exemption that shall contain:

(1) The name of the exempt person;

(2) The basis of the exempt status of the exempt person;

(3) The principal business address and contact information for the exempt person; and

(4) The State or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation.

(h) A State or federally chartered credit union may claim and confirm an exemption from this Article by notifying the Administrator of the Credit Union Division of the Department of Commerce and providing substantially the same information required by subsection (g) of this section.

(i) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"**§ 53-244.060. Issuance of license.**

If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license unless the Commissioner finds any of the following:

(1) The applicant has had a mortgage loan originator or mortgage lender, mortgage broker, or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation.

(2) The applicant or its controlling persons have been convicted of, or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court:

a. During the seven-year period preceding the date of the application for licensing and registration; or

b. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

A pardon of a conviction shall not be a conviction for purposes of this subdivision.

(3) The applicant or any of its controlling persons have been convicted of, or plead guilty or nolo contendere to any charge in a domestic, foreign, or military court, within the past five years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business.

(4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan originator or other licensee will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:

a. Current outstanding judgments, except judgments resulting solely from medical expenses;
b. Current outstanding tax liens or other government liens and filings;
c. Foreclosures within the past three years; or
d. A pattern of serious delinquent accounts within the past three years.

(5) The mortgage loan originator applicant has failed to complete the prelicensing education requirement described in G.S. 53-244.070.

(6) The mortgage loan originator applicant has failed to pass a written test that meets the requirements described in G.S. 53-244.080.

(7) The mortgage lender, mortgage broker, or mortgage servicer applicant has failed to meet the surety bond requirement described in G.S. 53-244.103.

(8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails to meet the minimum net worth requirement as described in G.S. 53-244.104.

(9) The applicant's participation in the mortgage business will not be in the public interest.

"**§ 53-244.070. Educational requirements for mortgage loan originators.**

(a) In order to be eligible to apply for a mortgage loan originator license, an individual must complete at least 24 hours of prelicensing education approved in accordance with subsection (b) of this section, which shall include:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for nontraditional mortgage products; and

(4) Four hours of North Carolina laws and regulations.

(b) Prelicensing education courses and the course providers shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry using reasonable standards consistently applied, subject to the Commissioner's approval of any course of study required by subdivision (a)(4) of this section. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Except as provided in subsection (e), prelicensing education may be offered only in a classroom or classroom equivalent setting, as approved by the Nationwide Mortgage Licensing System and Registry.

(e) An individual having successfully completed the prelicensing educational requirements in any other state, if the requirements have been approved by the Nationwide Mortgage Licensing System and Registry, shall be given credit for those hours toward the completion of the prelicensing requirements in this State, other than the hours required under subdivision (a)(4) of this section.

(f) An individual previously licensed under this Article whose license expires and who requests a late renewal of license pursuant to G.S. 53-244.101 must prove that the individual has completed all of the continuing education requirements for the preceding year.

"**§ 53-244.080. Testing requirements for mortgage loan originators.**

(a) An individual must pass a qualified written test, as defined by subsection (b) of this section, developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry. In addition, prior to licensure in this State, an individual must take a qualified written

test that tests the individual's knowledge and comprehension of North Carolina law and regulation.

(b) A written test shall not be treated as a qualified written test unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) North Carolina law and regulation pertaining to mortgage origination; and

(4) Federal and North Carolina law and regulations relating to fraud, consumer protection, nontraditional mortgage products, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity which is licensed by North Carolina to engage in the mortgage lending business.

(d) An applicant shall be considered to have passed a qualified written test provided the applicant achieves a test score of at least seventy-five percent (75%) correct answers to questions. In addition, an applicant shall not be considered to have passed a qualified written test if the individual did not achieve a test score of at least seventy-five percent (75%) correct answers to questions related to North Carolina law and regulation.

(e) An applicant may retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an applicant must wait at least six months before retaking the test. A licensed mortgage loan originator who fails to maintain a valid license for a period of three years or longer must retake the test.

"**§ 53-244.090. License application fees.**

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars ($1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars ($300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars ($125.00) for licensure as a mortgage loan originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

(b) Each principal and each branch office of a mortgage broker or mortgage lender licensed under the provisions of this Article shall be issued a separate license for which the Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars ($125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and its designated branch manager. Payment of the license fee under subsection (a) of this section shall be deemed to cover the location license fee for the principal office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an additional one hundred twenty-five dollars ($125.00) under this subsection.

"**§ 53-244.100. Active license requirements and assignability.**

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

(b) The license of a mortgage loan originator is not effective during any period when that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article. When a mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall include a statement of the specific reason for the termination of the mortgage loan originator's employment. A mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

(c) Each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall maintain on file with the Commissioner a list of all mortgage loan originators who are employed with the mortgage lender, mortgage broker, or mortgage servicer.

(d) No person, other than an exempt person, shall hold himself or herself out as a mortgage lender, a mortgage broker, a mortgage servicer, or a mortgage loan originator unless the person is licensed in accordance with this Article.

(e) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase, merger, or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license are applicable to the acquiring person.

"**§ 53-244.101. License renewal.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks and of processing fees of the nationwide system as the Commissioner shall require, nonrefundable renewal fees as follows:

(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars ($625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars ($300.00), and licensed mortgage lenders and mortgage brokers shall pay one hundred twenty-five dollars ($125.00) for each licensed branch office.

(2) Licensed mortgage loan originators shall pay an annual renewal fee of sixty-seven dollars and fifty cents ($67.50).

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

(1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and

(3) The licensee has paid all required fees for renewal of the license.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars ($250.00) as a nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee

shall pay a nonrefundable late fee of one hundred dollars ($100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager.

"**§ 53-244.102. Continuing education for mortgage loan originators.**

(a) A licensed mortgage loan originator shall annually complete at least eight hours of continuing education approved in accordance with subsection (b) of this section, including:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for nontraditional mortgage products; and

(4) One hour of North Carolina law and regulations.

(b) Continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Approval of a continuing education course shall include approval of the course provider.

(c) Nothing in this section shall preclude any continuing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(d) A licensed mortgage loan originator:

(1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(e) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(f) A licensee having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (a)(2), and (a)(3) of this section for any state shall be accepted as credit towards completion of continuing education requirements in North Carolina.

"**§ 53-244.103. Surety bond requirements.**

(a) Each mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

(1) A mortgage broker shall post a minimum surety bond of seventy-five thousand dollars ($75,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars ($10,000,000) but less than fifty million dollars ($50,000,000), then the mortgage broker's minimum bond amount shall be one hundred twenty-five thousand dollars ($125,000), and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars ($50,000,000) or more, the mortgage broker's minimum bond shall be two hundred fifty thousand dollars ($250,000).

(2) A mortgage lender or mortgage servicer shall post a minimum surety bond of one hundred fifty thousand dollars ($150,000). Provided, however, if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars ($10,000,000) but less than fifty million dollars ($50,000,000), then the mortgage lender's minimum bond amount shall be two hundred fifty thousand dollars ($250,000), and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars ($50,000,000) or more, then the mortgage lender's minimum bond shall be five hundred thousand dollars ($500,000).

(3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

(1) The licensee has been licensed by the Commissioner for at least three years;

(2) The licensee can demonstrate a net worth, according to the most recent audited financial statement, at least four times the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;

(3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and

(4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement

on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension.

"**§ 53-244.104. Minimum net worth requirements.**

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can be used in lieu of the mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

(1) If the licensee is a mortgage lender, it shall maintain a net worth of at least one hundred thousand dollars ($100,000), including evidence of liquidity of one million dollars ($1,000,000), which may include a warehouse line of credit of one million dollars ($1,000,000) or other evidence of funding capacity to conduct mortgage originations as documented by an unqualified audited statement of financial condition.

(2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least one hundred thousand dollars ($100,000), not including monies in any escrow accounts held for others.

(3) If the licensee is a mortgage broker, it shall maintain a net worth of at least twenty-five thousand dollars ($25,000), including evidence of liquidity of ten thousand dollars ($10,000), as certified by the licensee in a certified statement of financial condition.

(b) The Commissioner may adopt rules to require additional minimum net worth or otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate financial responsibility and accomplish the purposes of this Article.

"**§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

(a) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records.

(b) No person shall make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and Registry or in connection with any oral or written communication with the Commissioner or another governmental agency. If the information contained in any document filed with the Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30 days file a correcting amendment to the information contained in the document.

(c) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. The Commissioner may, by rule, impose terms and conditions under which the records and files of a mortgage lender or mortgage servicer may be maintained outside of this State. A principal place of business shall not be located at an individual's home or residence. A mortgage lender, mortgage broker, or mortgage servicer licensee shall maintain a record of the principal place of business with the Commissioner and report any change of address of the principal place of business or any branch office within 15 days after the change.

(d) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the

common fund can be individually tracked and accounted for and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds.

"**§ 53-244.106. Display of license.**

Each mortgage broker or mortgage lender licensed under this Article shall display, in plain public view, the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each mortgage loan originator licensed under this Article shall display, in plain public view, in each branch office in which the individual acts as a mortgage loan originator the certificate of licensure issued by the Commissioner.

"**§ 53-244.107. Unique identifier shown.**

The unique identifier of any mortgage loan originator or other person engaged in the mortgage business as defined in G.S. 53-244.030(10) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner.

"**§ 53-244.108. Reports.**

Each mortgage lender, mortgage broker, or mortgage servicer licensee shall submit to the Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the form and shall contain any information that the Commissioner or Nationwide Mortgage Licensing System and Registry may require.

"**§ 53-244.109. Mortgage broker duties.**

Any mortgage broker engaged in the mortgage business as defined by G.S. 53-244.030(10)a., in addition to duties imposed by other statutes or at common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower.

(2) Follow reasonable and lawful instructions from the borrower.

(3) Act with reasonable skill, care, and diligence.

(4) Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.

(5) Timely and clearly disclose to the borrower material information that may be expected to influence the borrower's decision and is reasonably accessible to the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.

(6) Notify before closing each lender of the particulars of each of the other lender's loans if the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower.

(7) Ensure that any services offered to any applicant shall be available and offered to all similarly situated applicants on an equal basis.

(8) In transactions where the mortgage broker has the ability to make credit decisions, use reasonable means to provide the borrower with prompt credit decisions on its loan applications and, where the credit is denied, to comply fully with the notification requirements of applicable State and federal law.

(9) Ensure that advertising materials are designed to make customers and potential customers aware that the mortgage broker does not discriminate on any prohibited basis.

(10) Represent the borrower's best interest in the course of brokering a mortgage loan.

(11) Have a duty of loyalty to the borrower, which shall include a duty not to compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker.

"**§ 53-244.110. Mortgage servicer duties.**

Any mortgage servicer engaged in the mortgage business as defined by G.S. 53-244.030(10)c., in addition to duties imposed by other statutes or at common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower.

(2) Follow reasonable and lawful instructions from the borrower.

(3) Act with reasonable skill, care, and diligence.

(4) File with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities with its application and renewal and with its supplemental filings made from time to time.

(5) File with the Commissioner upon request a report in a form and format acceptable to the Commissioner detailing the servicer's activities in this State, including:

a. The number of mortgage loans the servicer is servicing.

b. The type and characteristics of the loans in this State.

c. The number of serviced loans in default, along with a breakdown of 30-, 60-, and 90-day delinquencies.

d. Information on loss mitigation activities, including details on workout arrangements undertaken.

e. Information on foreclosures commenced in this State.

(6) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:

a. Any notice required by RESPA or by regulations promulgated thereunder.

b. A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with North Carolina law and which shall not exceed those reported to the Commissioner.

c. A notice in a form and content acceptable to the Commissioner that the servicer is licensed by the Commissioner and that complaints about the servicer may be submitted to the Commissioner.

d. Any notice required by Article 2A, 4, or 10 of Chapter 45 of the General Statutes.

(7) In the event of a delinquency or other act of default on the part of the borrower, the mortgage servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, to negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout to the delinquency.

"**§ 53-244.111. Prohibited acts.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any residential mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To improperly refuse to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report,

which the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances.

(4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering or servicing a mortgage loan in violation of this Article, including a mortgage loan brokered or serviced by any unlicensed person other than an exempt person.

(5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24, 45, or 54 of the General Statutes.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.

(9) To fail to pay promptly when due reasonable fees to a licensed appraiser for appraisal services that are:

a. Requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of the mortgage broker or mortgage lender; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage lender.

(10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars ($150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.

(11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be construed to prohibit a mortgage lender, mortgage broker, or mortgage servicer from asking the appraiser to do one or more of the following:

a. Consider additional appropriate property information.

b. Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

c. Correct errors in the appraisal report.

(12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of RESPA and regulations adopted thereunder.

(13) To broker a rate spread adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest annual percentage rate for which the borrower qualifies.

(14) To fail to comply with applicable State and federal laws and regulations related to mortgage lending or mortgage servicing.

(15) To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.

(16) In connection with the brokering or making of a rate spread home loan as defined under G.S. 24-1.1F, no lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan. This subdivision shall not prohibit compensation based on the principal balance of the loan.

(17) For a mortgage servicer to fail to comply with the mortgage servicer's obligations under Article 10 of Chapter 45 of the General Statutes.

(18) For a mortgage servicer to fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place such insurance when the mortgage servicer knows or has reason to know that the insurance is in effect.

(19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance.

(20) For a mortgage servicer to fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by the borrower, to pay all past due amounts, outstanding or overdue charges, and restore the loan to a nondelinquent status, but this reinstatement shall be available to a borrower no more than twice in any 24-month period.

(22) For a person acting as a mortgage servicer to fail to mail, at least 45 days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last known address with the following information:

a. An itemization of all past due amounts causing the loan to be in default.

b. An itemization of any other charges that must be paid in order to bring the loan current.

c. A statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development (HUD).

d. The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

e. The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

f. The address, telephone number, and other contact information for the consumer complaint section of the Office of the Commissioner of Banks.

(23) To fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent, unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

"**§ 53-244.112. Criminal penalties for unlicensed activity.**

Engaging in the mortgage business as defined by G.S. 53-244.030(10) or acting as a mortgage loan originator without a license as required by the provisions of G.S. 53-244.040 is a Class 3 misdemeanor. Each transaction involving unlicensed activity is a separate offense.

"**§ 53-244.113. Regulatory authority.**

(a) Unless otherwise provided, all actions, hearings, and procedures under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(b) For purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this Article, postage prepaid and addressed to the last known address of the licensee on file with the Commissioner pursuant to G.S. 53-244.105(c).

(c) Upon the issuance of any summary order permitted under this Article, including summary suspensions and cease and desist orders, the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

"**§ 53-244.114. Licensure authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

(1) That the order is in the public interest; and

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for licensure, report, or other document to the Commissioner 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;

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner;

c. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business;

d. Is the subject of an order of the Commissioner denying or suspending that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

e. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage, mortgage lending, or mortgage servicing industry denying that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

f. Fails at any time to meet the requirements of G.S. 53-244.060, 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or 53-244.104;

g. Controls or has controlled any mortgage broker, mortgage lender, or mortgage servicer who has been subject to an order or injunction described in sub-subdivision c., d., or e. of this subdivision;

h. Has been the qualifying individual, branch manager, or mortgage loan originator of a licensee who had knowledge of or reasonably should have had knowledge of, or participated in, any activity that resulted in the entry of an order under this Article suspending or withdrawing the license of a licensee;

i. Has failed to respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee which allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business; or

j. Has failed to respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article.

(b) In the event the Commissioner has reason to believe that a licensee, individual, or person subject to this Article may have violated or failed to comply with any provision of this Article, the Commissioner may:

(1) Summarily order the licensee, individual, or person to cease and desist from any harmful activities or violations of this Article; or

(2) Summarily suspend the license of the licensee under this Article.

These summary powers are in addition to the summary suspension procedures authorized by G.S. 150B-3(c).

"**§ 53-244.115. Investigation and examination authority.**

(a) For purposes of initial licensing, license renewal, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner may, at the expense of the applicant or licensee, access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

(1) Criminal, civil, and administrative history information, including nonconviction data;

(2) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person

with control, qualified individual, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be charged against the licensee, individual, or person subject to this Article.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee, individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the Commissioner;

(3) Periodic reports, including:

a. Annual Report Questionnaire,

b. Servicer Activity Report,

c. Servicer Schedule of the Ranges of Costs and Fees,

d. Lender/Servicer Audited Statements of Financial Condition,

e. Broker Certified Statements of Financial Condition, and

f. Quarterly Loan Origination Reports.

(4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or

procedures, documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

(1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;

(2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or

(3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:

a. By whom or by which the applicant is employed,

b. Over which the applicant has control, or

c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority.

"**§ 53-244.116. Disciplinary authority.**

(a) The Commissioner may, by order:

(1) Take any action authorized under G.S. 53-244.113.

(2) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with this Article. The civil penalty shall not exceed twenty-five thousand dollars ($25,000) for each violation of or failure to comply with this Article. Each violation of or failure to comply with this Article shall be a separate and distinct violation.

(3) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with any directive or order of the Commissioner. The civil penalty shall not exceed twenty-five thousand dollars ($25,000) for each violation of or failure to comply with any directive or order of the Commissioner. Each

violation of or failure to comply with any directive or order of the Commissioner shall be a separate and distinct violation.

(4) Require a licensee, individual, or person subject to this Article to disgorge and pay to a borrower or other individual any amounts received by the licensee, individual, or person subject to the Article, including any employee of the person, to the extent that the amounts were collected in violation of Chapter 24 of the General Statutes or in excess of those allowed by law.

(5) Prohibit licensees under this Article from engaging in acts and practices in connection with residential mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public.

(b) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article.

(c) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a manner to avoid classification of the loan as a residential mortgage loan.

"**§ 53-244.117. Foreclosure suspension.**

In the event the Commissioner shall have evidence that a material violation of law has occurred in the origination or servicing of a loan then being foreclosed or then delinquent and in threat of foreclosure, and that the putative violation would be sufficient in law or equity to base a claim or affirmative defense that would affect the validity or enforceability of the underlying contract or the right to foreclose, then the Commissioner may notify the clerk of superior court, and the clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the event that the Commissioner notifies the clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the clerk so that the foreclosure proceeding may be resumed. The authority granted to the Commissioner in this section is in addition to any powers or authority granted to the Commissioner under Chapter 45 of the General Statutes.

"**§ 53-244.118. Rule-making authority; records.**

(a) The Commissioner may adopt any rules that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, to prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage servicers, or mortgage loan originators in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article.

(b) The Commissioner shall keep a list of all applicants for licensure under this Article or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application, name, place of residence, and whether the license or claim of exempt status was granted or denied.

(c) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective mortgage loan originators and a roster of exempt persons required to file a notice under G.S. 53-244.050(g). The roster shall:

(1) Be kept on file in the office of the Commissioner;

(2) Contain information regarding all orders or other actions taken against the licensees and other persons; and

(3) Be open to public inspection.

"**§ 53-244.119. Commissioner's participation in nationwide registry.**

(a) The Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

(1) Background checks for:

a. Criminal history through fingerprint or other databases;

b. Civil or administrative records;

c. Credit history; or

d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for, renew, or amend licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

"**§ 53-244.120. Confidentiality of information.**

(a) Notwithstanding any State law to the contrary, the Commissioner shall report enforcement actions under this Article and may report other relevant information to the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies and may share otherwise confidential information pursuant to these written agreements.

(c) The requirements of G.S. 53-99(b) regarding the privacy or confidentiality of any information or material provided under subsections (a) and (b) of this section, and any privilege arising under any other federal or State law with respect to such information or material, shall continue to apply to the information or material after it has been disclosed to an entity described in subsections (a) or (b) of this section. Information or material held by such an entity shall not be subject to disclosure under any State law governing the disclosure to the public of information held by an officer or agency of the State. The entities described in subsections (a) and (b) of this section may share information and material with all State and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by State or federal law.

(d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of confidential supervisory information or of any information or material described in subsection

(a) of this section that is inconsistent with this section shall be superseded by the requirements of this section.

(e) The confidentiality provisions contained in subsection (c) of this section shall not apply with respect to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, mortgage servicers, or mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

"**§ 53-244.121. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or act of the Commissioner made pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or act may, pursuant to G.S. 53-92(d), appeal to the Banking Commission for review upon giving 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the Banking Commission. Failure to specify the assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92(d)."

SECTION 3. Severability. – If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. Any provision of this act deemed by HUD to conflict with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted, applied, or amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD. The Commissioner shall adopt rules or take such other actions as necessary to ensure the continued jurisdiction over and supervision of the mortgage business in this State to the fullest extent possible.

SECTION 4. Rules. – Unless inconsistent with the provisions of Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act, the rules adopted pursuant to former Article 19A of Chapter 53 of the General Statutes governing mortgage bankers and brokers and loan officers shall remain in effect until superseded by rules adopted under Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act.

SECTION 5. Transition. – All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the effective date of this act, shall maintain their status as licensees and shall be subject to the provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following transitional rules:

(1) All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes as of the effective date of this act shall have the following licensed status:

a. Any person licensed as a loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act.

b. Any person licensed as a mortgage banker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage lender as defined in G.S. 53-244.030(20), as enacted by Section 2 of this act.

c. Any person licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage broker as defined in G.S. 53-244.030(19).

d. Any person licensed as a mortgage servicer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage servicer as defined in G.S. 53-244.030(22).

e. Any person licensed as an exclusive mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as an exclusive mortgage broker as defined in G.S. 53-244.030(11a) as enacted by Section 2 of this act; provided that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010, and if such license has not been obtained by that date, the license of the exclusive mortgage broker shall be subject to summary suspension.

f. Any person licensed as a limited loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be permitted to act as a licensed mortgage loan originator as defined in G.S. 53-244.030(21) as enacted by Section 2 of this act; provided that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009, and if such license has not been obtained by that date, the license of the limited loan officer will expire.

(2) For the renewal period ending December 31, 2009, any person deemed a mortgage loan originator pursuant to subdivision (1)a. of this section must have met the requirements of this act for renewal, including the initial license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and G.S. 53-244.060(6), provided that the mortgage loan originator would have met the requirements for continuing education under G.S. 53-243.07(b), as repealed by Section 1 of this act. After December 31, 2009, applicants for renewal must meet all requirements for renewal under G.S. 53-244.101.

(3) Persons who maintain a bond posted and accepted by the Commissioner as satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be deemed to comply with the requirements of G.S. 53-244.103, as enacted by Section 2 of this act, through December 31, 2009.

(4) To the extent that loss mitigation specialists are included in the definition of a mortgage loan originator through an action by the U.S. Department of Housing and Urban Development, the Commissioner shall take necessary steps to license these individuals as mortgage loan originators in a timely fashion in a manner that ensures this act fulfills the requirements of the S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage business to the fullest extent possible.

(5) Any person who has been enjoined by the Commissioner of Banks or a court of competent jurisdiction from serving in any capacity defined under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, shall not be allowed to apply for or act in any similar capacity as defined by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose license under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, was subject to any terms, conditions, or affirmative duties imposed by the Commissioner of Banks or a court of competent jurisdiction shall be subject to the same terms, conditions, or affirmative duties for any similar license issued under G.S. 53-244.060 or renewed under G.S. 53-244.101, as enacted by Section 2 of this act.

SECTION 6. Except as otherwise provided by Section 5 of this act, this act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

HOUSE BILL 1523:
S.A.F.E. Mortgage Licensing Act

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 1, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Second Edition H1523-CSROf-53		

SUMMARY: ***House Bill 1523 repeals the North Carolina Mortgage Lending Act and replaces it with the Secure and Fair Enforcement Mortgage Licensing Act in order to conform to the requirements of Title V, of the federal Housing and Economic Recovery Act of 2008.***

The PCS adds provisions relating to the licensing of "exclusive mortgage brokers". Under current law, an exclusive mortgage broker may be licensed to act on behalf of a single licensed mortgage lender, broker, or exempt person on terms similar to a licensed mortgage broker. However, an exclusive mortgage broker is not required to meet the same experience requirements as a mortgage broker. The PCS makes this act consistent with existing law with regard to exclusive mortgage brokers.

The PCS also changes the effective date from July 1, 2009 to July 31, 2009.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class 3 misdemeanor.

The federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008 requires that any residential mortgage loan originator must be either State licensed or federally registered. States have until August 1, 2009, to conform their statutes to the federal standards. After that date, loan originators in states that do not have conforming licensing statute will be subject to the federal registration system.

BILL ANALYSIS:

House Bill 1523 establishes a new Article 19B of Chapter 53 of the General Statutes, to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act. The bill includes the following provisions as required by the federal law:

- Provides for licensing of loan originators, as well as mortgage brokers, mortgage lenders and mortgage servicers through registration with the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.040)
- Provides effective supervision and enforcement of the law, including the suspension, termination, or nonrenewal of a license for a violation of the State or federal law. (G.S. 53-244.114)

- Provides for the regular reporting of violations as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.108)
- Provides a process for challenging information contained in the Nationwide Mortgage Licensing System and Registry. (G.S. 53-244.113)
- Provides a mechanism to assess civil penalties for individuals acting as mortgage originators without a valid license or registration. (G.S. 53-244.116)
- Provides for minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator. (G.S. 53-244.103, 104)

Section 1 repeals Article 19A of Chapter 53 of the General Statutes, the Mortgage Lending Act.

Section 2 establishes a new Article 19B to be cited as the North Carolina S.A.F.E. Mortgage Licensing Act, which includes:

- License and registration requirements for mortgage loan originators as well as mortgage brokers, mortgage lender, and mortgage servicers. Applications for licensure must be made through the Nationwide Mortgage Licensing System and Registry. Each individual applicant must be at least 18 years of age, have completed within 3 years, the mortgage lending prelicensing education, and have passed, within 3 years, a test developed and administered by the Nationwide Mortgage Licensing System and Registry. Each applicant for licensure as a mortgage broker, mortgage lender, or mortgage servicer must have at least three years of experience in residential mortgage lending or other experience required by the Commissioner. Applicants must submit to a criminal history background check, review of credit reports, and information related to administrative, civil or criminal findings by any governmental jurisdiction.
- License application fees of $1,250.00 for mortgage brokers, mortgage lenders, and mortgage servicers, and $125.00 for mortgage loan originators. Each additional branch office must pay a $125.00 filing fee. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.
- Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $125.00 fee for each branch office. The renewal fee for mortgage loan originators is $67.50. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.
- Licensees must complete at least 8 hours of continuing education including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products/
- Loan originators must be covered by a surety bond through employment with a licensee. A mortgage broker must post a bond of $75,000.00, but if the broker originates between $10 million and $50 million dollars in loans per year, the bond must be for $125,000.00, and if the broker originates $50 million or more per year, the bond must be for $250,000.00. A mortgage lender or servicer must post a minimum surety bond of $150,000.00. If the mortgage lender originates between $10 million and $50 million in loans per year, the bond shall be for $250,000.00, and if the mortgage lender originates $50 million or more in loans per year, the bond shall be for $500,000.00. The bill also contains minimum net worth requirements.

- Imposes specific duties on mortgage brokers which are intended to protect the public. The Commissioner of Banks is given specific regulatory authority including authority to discipline licensees and impose civil penalties.
- The Commissioner also retains the authority contained in the repealed law to suspend a foreclosure proceeding when the Commissioner has evidence that a material violation of the law has occurred.
- The Banking Commission has authority to review any action taken by the Commissioner.
- The bill contains instructions for the transition of current licensees into the new system over a period of time.

EFFECTIVE DATE: Except for the provisions relating to transition, the act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

H1523-SMRO-109(CSRO-53) v2

SENATE COMMERCE COMMITTEE
Tuesday, June 9, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 9, 2009, in Room 1027 of the Legislative Building. Twenty-four members of the committee were present. Senator R.C. Soles presided. Anna Paschall, Coralie Watts, Elyse Marder of Gastonia; Emily Rangel, Lizzy Thomas, Olivia Shields and Katelyn Rall of Greensboro; and Snow Holding of Raleigh served as pages.

SJR 1101 – Utilities Commission Confirmation.

Steve Rose, a staff attorney with the Research Division, was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS provides for the confirmation of the appointments of Lorinzo Joyner, Bryan Beatty, and Tonola D. Brown-Bland to the Utilities Commission. Andy Willis, Senior Advisor for Governmental Affairs – Governor's Office, was recognized to support the appointees. Bryan Beatty, Lorinzo Joyner and ToNola D. Brown-Bryant were recognized to give brief overviews of their qualifications. Senator Dorsett moved for a favorable report and the motion carried. A copy of the PCS, the appointees' biographical information and the summary is attached.

HB 98 – License Renewal/Active Military Duty.

Representative Killian was recognized to explain the bill. It authorizes a member of the Armed Forces or of reserve components of the Armed Forces to renew a drivers license upon receipt of deployment orders and allows a thirty-day grace period for an expired license upon release from active duty. Senator Rand offered an amendment which corrected language. After much discussion, the bill was removed from the agenda. A copy of the bill, the amendment and the summary is attached.

HB 1105 – Amend Laws/Refrigeration Contractors.

Representative Martin was recognized to explain the bill, which amends the laws regulating refrigeration contractors. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1094 – Require Documentation-Certain Special Plates.

Representative Justus was recognized to explain the bill, which requires that special plates that are available to military veterans are issued only to appropriate applicants. Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 682 – Adjust Conflict Threshold.

Representative Guice was recognized to explain the bill. The bill adjusts the exemption limits for small local governments in the public contracting statutes to account for inflation since last adjusted seven years ago, allows automatic adjustments to account for future changes in the consumer price index, and provides a uniform procedure for inflation indexing that other provisions may incorporate by reference. Senator Rand offered an amendment that changed the price indexing components of the bill. After much discussion, Senator Rand requested that the amendment be rolled into a PCS and presented at a later meeting. A copy of the bill, the amendment and the summary is attached.

The meeting adjourned at 12:01 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 09, 2009

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

FAVORABLE

H.B.(CS #1) **1094** Require Documentation-Certain Special Plates.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1105** Amend Laws/Refrigeration Contractors.
Sequential Referral: Finance
Recommended Referral: None

UNFAVORABLE AS TO JOINT RESOLUTION, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE JOINT RESOLUTION

S.JR. **1101** Utilities Commission Confirmation.
Draft Number: 55429
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

H1094 – Sen. Apodaca
H1105 - ?

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 9, 2009	11:00 AM	1027 LB

The following will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
	HB 98	License Renewal/Active Military Duty	Representative Sager Representative Dollar Representative Burris-Floyd Representative Killian
	HB 682	Adjust Conflict Threshold.	Representative Guice
Tim	HB 889	Struc. Settlement Annuities/Ins. Guar. Assn.	Representative Faison Representative Blue Representative Love, Sr. Representative Haire
	HB 1094	Require Documentation-Certain Special Plates.	Representative Justus
	HB 1105	Amend Laws/Refrigeration Contractors.	Representative Martin
Tim	HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Gibson, III Representative Grady Representative Owens, Jr.
Tim	HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Justus Representative Johnson Representative Brisson
	SB 534	Healthy Families and Healthy Workplaces Act.	Senator Dorsett
	SJR 1101	Utilities Commission Confirmation.	Senator Soles, Jr.

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, June 9, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 98	License Renewal/Active Military Duty	Rep. Sager Rep. Dollar Rep. Burris-Floyd Rep. Killian
HB 682	Adjust Conflict Threshold.	Rep. Guice
HB 1094	Require Documentation-Certain Special Plates.	Rep. Justus
HB 1105	Amend Laws/Refrigeration Contractors.	Rep. Martin
SB 534	Healthy Families and Healthy Workplaces Act.	Sen. Dorsett
SJR 1101	Utilities Commission Confirmation.	Sen. Soles

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 9, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kay Hatcher	NC DMV
Brenda Freeman	DMV
Brenda Grady	NCDMV
Anna Boyer	NCJC
Rob Schofield	NCJC
BRIAN LIVECCHI	POYNER SPRUILL, RALEIGH
LOWELL MILLER	NCLHIGA
Henry Hutaff	N.C.B.A.
OCTAVIA RAINEY	CFDF
AJAMU DILLAHUNT	NCJC
Mary Beth McMillan	NC AFL-CIO

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	NC Chamber
Cam Cowan	BPM HL
Polly Williams	Triangle OWL
ANNA Mercer-McLean	Community School for People under 6 400 Caldwell Ext Chapel Hill 27516
Donna D. Hatch	AARP & OWL
Louisa Warren	NC Justice Center
Bill Rowe	NC Justice Center
Heather Barrett	Hunton & Williams
Allison Wallen	Charlotte Chamber
Kathleen Channing	Poyner Spruill, Raleigh
Caroline Payseur	Poyner Spruill, Raleigh

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andrea Cook	PLC + Assoc.
Richard Thompson	Dominion
Nancy Thompson	weyerhaeuser
Christy Agar	DOA
Herb Crenshaw	AT+T

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jack Nichols	Allen + Pinnix Law Firm
Tom Vaughan	Action for Children
Gregg Thayer	HFTB
Marvin Waters	CCPS
Bob Wilbe-	SUNTRUST BANK
PAUL WILLIAMS	PIEDMONT NAT GAS
Henry Jones	Attorney Raleigh
Bill Culpepper	NC Utilities Commission
Kathy Hawkins	Progress Energy
Mitch Williams	Progress Energy
Daniel Long	NCVC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lemuel Hinton	NCUC
Mac Ellis	Utilities Commission
Michael De Los Santos	NC ACORN
[signature]	MWC
Cameron Hanley	Electrician of NC
CAROLINE HOWE	Gov's office
Connie Wilson	ECNC
Jerry Reece	NC Conc. Paving Assoc.
Josh Turner Kyle Denton Kissi Denton	G. Page
[signature]	[signature]
[signature]	NCAHPHA
[signature]	NCIPNC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John McAlister	NC Chamber
Lindsay Clifton	Governor's office
Amy McConkey	Smith Anderson
Thomas Moore	Robinson Bradshaw
Jon Carr	Jordan Price - NCRLA
John Quinterno	NC BTC
Charlie Smith	NCDVA
Rick Hunt	Weyerhaeuser
Diane Littlejohn	NCDOL
John Hoomani	NCDOT
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 9, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Scott Garoner	Duke Energy
Bill McAulay	PSNC Energy
Paul Meyer	NCLM
Bobby Owen	NCUC
Len Anthony	Progress Energy
Bob Slocum	NCFA
Abby Brown	NMSS-NC
Nathan Batts	NCBA
Dianna Downey	NCUC Public Staff
Dwight Allen	Allen Law Offices, PLLC
Robert Gruber	ACNL Public Staff

Ann Sanford
Bill Craig

Sanford Law Office
all tal

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE JOINT RESOLUTION 1101
PROPOSED COMMITTEE SUBSTITUTE S1101-CSRL-45 [v.1]

6/8/2009 5:13:54 PM

Sponsors:

Referred to:

May 6, 2009

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF LORINZO JOYNER, BRYAN BEATTY, AND TONOLA D. BROWN-BLAND TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy has occurred on the North Carolina Utilities Commission due to the resignation of Howard N. Lee, and three terms expire June 30, 2009; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of her appointees, Lorinzo Joyner, Bryan Beatty, and ToNola D. Brown-Bland to serve terms beginning July 1, 2009, and expiring June 30, 2017; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of her appointee ToNola D. Brown-Bland to serve the remainder of the term expiring June 30, 2009, caused by the resignation of Howard N. Lee; Now, therefore,

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

SECTION 1. The appointments of Lorinzo Joyner, Bryan Beatty, and ToNola D. Brown-Bland to the North Carolina Utilities Commission for terms beginning July 1, 2009, and expiring June 30, 2017, are confirmed.

SECTION 2. The appointment of ToNola D. Brown-Bland to the North Carolina Utilities Commission for the remainder of the term of Howard N. Lee expiring June 30, 2009, is confirmed.

SECTION 3. This resolution is effective upon ratification.

SENATE JOINT RESOLUTION 1101: Utilities Commission Confirmation

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 8, 2009
Introduced by:	Sen. Soles	**Prepared by:**	Steven Rose Committee Counsel
Analysis of:	PCS to First Edition S1101-CSRL-45		

SUMMARY: ***SJR 1101 confirms the reappointment of Bryan Beatty and Lorinzo Joyner to the Utilities Commission. Commissioners Beatty and Joyner are currently serving terms expiring June 30, 2009. Their new terms will commence July 1, 2009 and expire June 30, 2017.***

SJR 1101 also confirms the appointment of ToNola Brown-Bland to the Commission. Ms. Brown-Bland will fill the remainder of the term of Commissioner Howard Lee, who has resigned. Commissioner Lee's term expires June 30, 2009. Ms. Brown-Bland has been reappointed to serve a new term beginning July 1, 2009 and ending June 30, 2017.

Confirmation by the General Assembly of Utilities Commission appointments made by the Governor is required by G.S. 62-10. This resolution is effective upon ratification.

For each appointment, a biographical narrative and a Statement of Economic Interest filed with the State Ethics Commission are before this Committee, together with the evaluation letter from the Ethics Commission. The Governor's letter of appointment is also before the Committee.

The PCS corrects the gender references to the Governor and the spelling of Ms. Brown-Bland's first name.

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

A Utilities Commissioner is presently paid a salary of $123,198 annually. The salary of the Chairman is $137,203. There are fixed salary augmentations based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years.

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

A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-10(i) provides, in part: *"Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office."*

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

The General Assembly created the Utilities Commission and establishes policies that the Commission carries out, usually with broad discretion. Chapter 62 of the General Statutes provides that the Commission is both a regulator of public utilities, as well as a judge in all matters relating to regulated public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over electric cooperatives and their subsidiaries, and municipal providers of electricity.

EFFECTIVE DATE: The resolution is effective upon ratification.

S1101-SMRL-85(CSRL-45) v1

BRYAN ELLIOT BEATTY

WORK HISTORY

January 2009 – Present	Commissioner *North Carolina Utilities Commission*
January 2001 – January 2009	Secretary *North Carolina Department of Crime Control and Public Safety*
October 1999 – January 2001	Director *State Bureau of Investigation* *North Carolina Department of Justice*
March 1999 – October 1999	Deputy Attorney General for Policy and Planning *North Carolina Department of Justice*
November 1997 – February 1999	Inspector General *Office of Inspector General* *North Carolina Department of Justice*
May 1991 – October 1997	Assistant Attorney General *Motor Vehicles Section* *North Carolina Department of Justice*
September 1989 - May 1991	Associate Attorney General *North Carolina Department of Justice* *Assigned to University of North Carolina Hospitals at Chapel Hill*
August 1987 – August 1988	Associate Attorney *Johnson, Toal & Battiste, P.A.* *Columbia, SC*
January 1981 – August 1984	Special Agent *State Bureau of Investigation* *North Carolina Department of Justice* *Assignments: Governor's Security and Narcotics Investigation*

EDUCATION

May 1987	Juris Doctor, School of Law University of North Carolina at Chapel Hill
May 1981	Graduated from N.C. State Bureau of Investigation Academy - Salemburg, NC
May 1980	Bachelor of Arts Degree, Political Science State University of New York at Stony Brook
May 1976	Graduated from Salisbury High School Salisbury, NC

EXPERIENCE

North Carolina Department of Crime Control and Public Safety

- Member of Governor Mike Easley's Executive Cabinet.
- Administered state department of nine divisions which includes State Highway Patrol, North Carolina National Guard, Alcohol Law Enforcement, Division of Emergency Management, Governor's Crime Commission, Victim's Compensation, Butner Public Safety and other agencies.
- Coordinated state's emergency response to eleven federally declared disasters and several state declared disasters.
- Managed an annual budget of between $400 and $800 million; 3000+ personnel.
- Served as Governor's Homeland Security Advisor – coordinated security activities for state of North Carolina. Received top-secret security clearance from U.S. Department of Homeland Security.
- Conducted press conferences and interviews with statewide, local and national media.

State Bureau of Investigation

- Director of the state law enforcement agency which is responsible for investigating violations of the state's criminal laws ranging from assaults, homicide, arson, drug offences, crime against property and environmental crimes. Agency includes state crime lab.
- Conducted press conferences with statewide and local media.
- Sworn law enforcement officer assigned to narcotics investigations and executive security detail.

Policy and Planning

- Legislative liaison and Continuing Legal Education coordinator for the North Carolina Department of Justice.

Office of Inspector General

- Developed and managed the state office which was responsible for coordinating the activities in North Carolina related to the investigation, prosecution and prevention of fraud in the state supervised public assistance programs.

NC Division of Motor Vehicles

- Drafted statutes and administrative rules related to motor vehicle law.
- Represented Division of Motor Vehicles in civil actions and personnel cases.
- Advised Division of Motor Vehicles staff on issues related to motor vehicle law.
- Represented the State of North Carolina in appeals of criminal convictions.

UNC Hospitals

- Managed collection litigation for UNC Hospitals.
- Represented UNC Hospitals at involuntary commitment proceedings.
- Represented patients in administrative appeals of Medicaid denials.

Private Practice

- Litigated civil, criminal and domestic cases in South Carolina courts.

BOARDS AND COMMISSIONS

- Chairman, North Carolina State Emergency Management Response Commission
- Member, North Carolina Lottery Commission
- Board of Directors, Frankie Lemmon School
- Board of Directors, Pines of Carolina Girl Scout Council
- Board of Directors, N.C. Criminal Justice Information Network (CJIN)
- Member, Governor's Crime Commission
- Ex-officio member of several state commissions and councils.

HONORS AND AWARDS

- The Order of the Long Leaf Pine - 2008
- North Carolina Distinguished Civilian Service Medal – 2005
- Charles Dick Medal of Merit – National Guard Association of the United States – 2005
- National Governor's Association Award for Distinguished Service to State Government – 2003
- University of North Carolina at Chapel Hill, Outstanding Alumni Award – 2002

BAR ADMISSIONS

- North Carolina Bar
- South Carolina Bar
- Fourth Circuit Court of Appeals
- U.S. District Court, Eastern and Middle Districts of North Carolina

Commissioner Bryan E. Beatty

Commissioner Beatty was appointed to the North Carolina Utilities Commission by Governor Mike Easley and confirmed by the North Carolina General Assembly for a term that commenced on January 7, 2009 and expires on June 30, 2009.
On May 1, 2009, Beatty was nominated by Governor Beverly Perdue to continue serving on the Utilities Commission subject to confirmation by the General Assembly for an eight year term beginning on July 1, 2009.

Born March 10, 1958 in Englewood, New Jersey and a graduate of Salisbury High School in Salisbury, North Carolina, he earned his B.A. in Political Science from the State University of New York at Stony Brook in 1980. Beatty received his Juris Doctorate in 1987 from the University of North Carolina School of Law and is a 1981 graduate of the N.C. State Bureau of Investigation Academy at Salemburg.

Beatty served as the Secretary of the N.C. Department of Crime Control and Public Safety from 2001 until 2009 and was in charge of the state's homeland security coordination. He also served as director of the State Bureau of Investigation from October 1999 to January 2001.

During his tenure at the Department of Justice, he also served as an SBI agent, an associate attorney general representing the UNC Hospital System, an assistant attorney general in the Motor Vehicles section, the state's first inspector general, and deputy attorney general for policy and planning.

Beatty is the immediate past chair of the State Emergency Response Commission and served on the N.C. Lottery Commission. He has also served as a member of the Governor's Crime Commission, on the Board of Directors of the Criminal Justice Information Network, and as chair of the Governor's Terrorism Preparedness Task Force.

Beatty received the National Governors' Association Award for Distinguished Service to State Government in August 2003 for his leadership in North Carolina's terrorism preparedness efforts. In November 2002, he was honored by the University of North Carolina at Chapel Hill with the Harvey E. Beech Outstanding Alumni Award, established to recognize black alumni who are "stellar leaders within the University community or in his or her local community." In 2005, Beatty received the Charles Dick Medal of Merit Award from the National Guard Association of the United States. Also, in 2005 he received the Distinguished Civilian Service Award from the State of North Carolina.

Beatty and his wife Rhonda have three children, Bryan Jr., Nicole and Michael.

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

January 5, 2008

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: Evaluation of Statement of Economic Interest Filed By Secretary Bryan E. Beatty

Dear Governor Easley:

I am in receipt of Secretary Bryan E. Beatty's 2009 Statement of Economic Interest as a prospective appointee to the **North Carolina Utilities Commission ("Commission")**. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

Secretary Beatty noted that he previously owned securities in various energy companies, including Duke Energy, Progress Energy, Spectra Energy and SCANA, all of which are regulated by the Commission. He disclosed that all shares of these securities were sold in 2007-2008.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

2009 Statement of Economic Interest

("Long Form")

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
Office location: Administration Building, 116 West Jones Street, Room G-068, Raleigh 27601
For assistance please call 919-807-4620 or e-mail: ethics.commission@doa.nc.gov.
An electronic version of this SEI and additional information about its completion are available on the Commission's website at www.ethicscommission.nc.gov.

RECEIVED
DEC 3 1 2008
STATE ETHICS COMMISSION

CONTACT INFORMATION

Name of Person Filing: Bryan E. Beatty

Preferred Mailing Address[1]: 4701 Mail Service Center
Raleigh, NC 27699-4701

Job Title/Employer: Secretary, NC Department of Crime Control & Public Safety

Daytime Phone Number: 919-733-2126

E-Mail Address: bbeatty@nccrimecontrol.org

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards on which you are serving or to which you are being considered for appointment:

North Carolina Utilities Commission

Please provide the following information concerning your spouse and other members of your immediate family.[2] If the information requested does not apply, please indicate "none."

Name (First, Last)[3]	Occupation	Employer	Business
Rhonda H. Beatty	None	N/A	N/A
Bryan E. Beatty, Jr.	None	N/A	N/A
Nicole A. Beatty	None	N/A	N/A
Michael E. Beatty	None	N/A	N/A

[1] With the exception of judicial officers (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

[3] Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of 12/31/08 unless another time period is specified in the question.

- ▶ Do not list the value of those assets or liabilities.
- ▶ Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.

REAL ESTATE

1. List all North Carolina real estate in which you, your spouse, or other members of your immediate family have an ownership interest with a market value of $10,000 or more.

Owner of Real Estate	Location by County and City	% Ownership Interest
Bryan & Rhonda Beatty	Wake County	100%

2. List all North Carolina real estate with a market value of $10,000 or more that is rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City
None		

PERSONAL PROPERTY

3. List personal property with a market value of $10,000 or more that was sold to or purchased from the State by you, your spouse, or other members of your immediate family *within the preceding two years*. Please identify the State agency involved in the purchase or sale of the property.

Identity of Purchaser	Identity of Seller	Nature and Location of Property
None		

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

4. List personal property with a market value of $10,000 or more that was leased or rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property
None		

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). List the name of each publicly owned company in which you, your spouse, or other members of your immediate family own interests valued at $10,000 or more.

- ▶ Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.
- ▶ Do not disclose the value of your interests.

Owner of Interest	Name of Company
None	

5(b). List the name of each company in which you, your spouse, or other members of your immediate family hold stock options valued at $10,000 or more.

- ▶ Do not disclose the value of the stock option(s).
- ▶ Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). List financial interests valued at $10,000 or more that you, your spouse, or other members of your immediate family have in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations).

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company
None		

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
None	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

VESTED TRUSTS

7. If you, your spouse, or other members of your immediate family are the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*, provide the following information.

► Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust
None		

LIABILITIES

8. List each liability of $10,000 or more incurred by you, your spouse, or other members of your immediate family, excluding indebtedness on your primary personal residence.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
None	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

II. OTHER DISCLOSURES

9. At anytime during 2008, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes? ___Yes _x_No
If so, provide the following information.

- ▶ Do not list State boards or entities, or entities created by a political subdivision of the State.
- ▶ If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
None			

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2008 if that source was not previously listed in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest dividends, rental income, and business income. Please do *not* include income received from the following sources:

- ▶ Capital gains
- ▶ Federal government retirement
- ▶ Military retirement
- ▶ Social security income

Recipient of Income	Name of Source	Business or Industry	Type of Income
Bryan E. Beatty, Sr.	State of NC	Public Safety	Salary

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

11. Are you are a practicing attorney? ___Yes X No
If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2008.

( ) Administrative ( ) Admiralty ( ) Corporate ( ) Criminal
( ) Decedents' Estates ( ) Environmental ( ) Insurance ( ) Labor
( ) Local Government ( ) Real Property ( ) Securities ( ) Tax
( ) Tort litigation (including negligence) ( ) Utilities regulation

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ___Yes X No
If so, provide the following information for those services for which you charged or were paid over $10,000 during 2008.

Type of Business	Nature of Services Rendered
None	

13. As of December 31, 2008, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with your State board or employing entity? Yes X No
If so, provide the following information.

► You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
None		

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which ha an interest in issues over which your agency or board may have jurisdiction? ___Yes _X_No
If so, provide the following information.

▶ You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

▶ Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
None		

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ___ Yes _X_ No
If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ___ Yes _X_ No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

▶ Do not report gifts given by members of your extended family.

▶ Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value
None			

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ___Yes _X_ No
If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

► You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
None			

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such during 2008? ___ Yes _X_ No
If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other information that may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? _X_ Yes ___No

If so, please provide that information.

I owned stock in Progress Energy, Duke Energy, SCANA Corp. and Spectra Energy. I sold all shares of the stock in 2007-08.

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.**

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

B. E. Beatty
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by Bryan E. Beatty
(Name of Person Filing)

Date: Dec 31, 2008
(Official Seal)

Lisa W. Evans
Official Signature of Notary Public

Notary's printed or typed name: Lisa W. Evans

My Commission Expires: 5-12-2012

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

ToNOLA D. BROWN-BLAND

405 Cobblestone Court ♦ Burlington, NC 27215

PROFESSIONAL EXPERIENCE

Associate General Counsel, City Attorney's Office, Greensboro, NC
(May 2005 to present)

Provide counsel and legal advice to City Council, City Manager, Directors and staff of City Departments. Areas of special emphasis: utilities, telecommunications, economic development, federal and state legislation.

- Work with businesses to negotiate performance agreements for economic assistance
- Work to accomplish City's state legislative agenda, communicating with legislators and other organizations
- Handle and manage litigation, including mediation and settlement negotiation
- Draft and interpret agreements, ordinances and resolutions

Attorney, North Carolina Utilities Commission, Raleigh, NC
(December 2002 – May 2005)

Provided legal counsel to Commission and Commission Staff.

- Primarily assigned to matters pertaining to telecommunications law
- Participated in committee meetings of the National Association of Regulatory Utility Commissioners

Director, NC Department of the Secretary Of State, Business License Information Office, Raleigh, NC
(April 2001- November 2002)

Managed and directed daily operations of the business license information division and the charitable solicitation licensing section.

- Revised division publication regarding business licensing
- Instituted new license application procedures for charitable organizations
- Created training opportunities to improve staff's ability to better serve the public

Corporate Counsel, Lucent Technologies Inc. (and its predecessor AT&T Corp.), Greensboro, NC
(July 1995 – October 2000)

Provided counsel and legal advice to business units and operations support teams.

- Primarily assigned to federal government sales business unit
- Provided legal support for negotiations resulting in development contract valued in excess of $18 million
- Negotiated settlement of contractual disputes resulting in payments to Company in excess of $1 million
- Instrumental in negotiation and sale of business assets, including the licensing of related technologies
- Spearheaded Y2K risk assessment for business unit and conducted client training on Y2K concerns
- Received Law Division and client recognition awards for support leading to close of sale of two business lines, the addition of certain third-party products to Company's Federal Supply Schedule, and Human Resources' efficient and proper implementation of Company's Force Management Program

Associate, Hill Evans Jordan & Beatty, (formerly Nichols, Caffrey, Hill, Evans & Murrelle), Greensboro, NC
(September 1989 - June 1995)

Practiced primarily as civil defense attorney with special emphasis in the areas of insurance defense, labor and employment, civil rights, education, product liability, collections and unfair trade practice.

- Handled and argued a number of civil appeals before North Carolina Supreme Court and North Carolina Court of Appeals
- Provided counsel to newly created school board on various matters, including interpretation of enabling legislation and open meetings law

Judicial Law Clerk to The Honorable Alexander B. Denson,
United States Magistrate Judge for the Eastern District of North Carolina, Raleigh, NC
(August 1987 - August 1989)

Legal Intern, City Attorney's Office, Greensboro, NC
(Summer 1986)

Law Clerk, Wilder, Gregory & Martin, Richmond, VA
(Summer 1985)

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor Degree (1987)

HONORS

•James A. Bell Scholar •Earl Warren Scholar •Dean's Advisory Council

University of North Carolina, Chapel Hill, NC
Bachelor of Arts Degree in Political Science and Radio, Television, and Motion Pictures (1984)

HONORS

•Phi Beta Kappa •Pi Sigma Alpha •Pogue Scholar

HISTORY of PROFESSIONAL and COMMUNITY ACTIVITIES

Regulatory Studies Program, Institute of Public Utilities, Michigan State University

Municipal Administration Course, UNC School of Government

Manager's Leadership Roundtable, City of Greensboro

Introduction to Supervision Program, NC Office of State Personnel

EEO Institute for Managers and Supervisors, NC Office of State Personnel

North Carolina State Bar, Licensed 1987

Member, Greensboro, North Carolina, and American Bar Associations

- •NCBA Labor & Employment Law Section Council
- •Government and Public Sector Section
- •NCBA Corporate Counsel Section
- •Panelist, N.C. State Bar Moral Character Interviews

Board of Directors, Greensboro Bar Association, Alamance County Historical Museum, and Western Piedmont Residential Services

Board of Trustees, Union Grove Baptist Church

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

April 21, 2009

The Honorable Beverly E. Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Re: Evaluation of Statement of Economic Interest Filed By **Ms. ToNola Brown-Bland**

Dear Governor Perdue:

I am in receipt of Ms. ToNola Brown-Bland's April 21, 2009, Statement of Economic Interest as a prospective appointee to the **North Carolina Utilities Commission ("Commission")**. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

Ms. Brown-Bland is employed as an Associate General Counsel for the City of Greensboro.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

2009
Statement of Economic Interest
("Long Form")

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
For assistance please call 919-715-2071 or e-mail:
An electronic version of this SEI and additional information about its completion are available on the Commission's website at

CONTACT INFORMATION

Name of Person Filing ToNola Brown-Bland

Preferred Mailing Address[1] 405 Cobblestone Court
Burlington, NC 27215

Job Title/Employer Associate General Counsel/City of Greensboro, NC

Daytime Phone Number 336.373.4628

E-Mail Address

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards on which you are serving or to which you are being considered for appointment:

North Carolina Utilities Commission

Please provide the following information concerning your spouse and other members of your immediate family.[2] If the information requested does not apply, please indicate "none."

Name (First, Last)[3]	Occupation	Employer	Business
Stephon Bland	Driver	UPS	transportation/shipping

[1] With the exception of judicial officers (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

[3] Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

PLEASE RESPOND TO EACH QUESTION

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of 12/31/08 unless another time period is specified in the question.

- **Do not list the value of those assets or liabilities.**
- **Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.**

REAL ESTATE

1. Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more? ☑ Yes ☐ No If so, please list below.

Owner of Real Estate	Location by County and City	% Ownership Interest
ToNola Brown-Bland	Alamance County (Burlington)	100
Stephon Bland	Durham County (Durham)	50

2. Do you, your spouse, or members of your immediate family rent North Carolina real estate with a market value of $10,000 to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City

PERSONAL PROPERTY

3. Within the preceding two years, have you, your spouse, or members of your immediate family sold or bought personal property with a market value of $10,000 or more to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the purchase or sale.

Identity of Purchaser	Identity of Seller	Nature and Location of Property

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

4. Do you, your spouse, or members of your immediate family rent personal property with a market value of $10,000 to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). Do you, your spouse, or members of your immediate family own interests in a publicly owned company valued at $10,000 or more? ☐ Yes ☑ No If so, please list below.

► Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.

► Do not disclose the value of your interests.

Owner of Interest	Name of Company

5(b). Do you, your spouse, or members of your immediate family hold stock options in a publicly owned company valued at $10,000 or more? ☐ Yes ☑ No ☐ Listed Above If so, please list below.

► Do not disclose the value of the stock option(s).

► Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held

PLEASE RESPOND TO EACH QUESTION

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)? ☐ Yes ☑ No If so, please list below.

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known.*

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
none	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
none	

PLEASE RESPOND TO EACH QUESTION

VESTED TRUSTS

7. Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*? ☐ Yes ☑ No

If so, please list below.

▶ **Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.**

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust

LIABILITIES

8. Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness on your primary personal residence? ☐ Yes ☑ No

If so, please list below.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)

PLEASE RESPOND TO EACH QUESTION

II. OTHER DISCLOSURES

9. At anytime during 2008, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes? ☑ Yes ☐ No

If so, provide the following information.

▶ Do not list State boards or entities, or entities created by a political subdivision of the State.

▶ If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
ToNola Brown-Bland, Trustee	Union Grove Baptist Church	church	no state business or funding

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2008 if that source was not previously listed in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income. Please do *not* include income received from the following sources:

- **▶ Capital gains**
- **▶ Federal government retirement**
- **▶ Military retirement**
- **▶ Social security income**

Recipient of Income	Name of Source	Business or Industry	Type of Income
none			

PLEASE RESPOND TO EACH QUESTION

11. Are you are a practicing attorney? ☑ Yes ☐ No

If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2008.

( ) Administrative ( ) Admiralty ( ) Corporate ( ) Criminal
( ) Decedents' Estates ( ) Environmental ( ) Insurance ( ) Labor
( ) Local Government ( ) Real Property ( ) Securities ( ) Tax
( ) Tort litigation (including negligence) ( ) Utilities regulation

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ☐ Yes ☑ No

If so, provide the following information for those services for which you charged or were paid over $10,000 during 2008.

Type of Business	Nature of Services Rendered

13. As of December 31, 2008, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with your State board or employing entity? ☐ Yes ☑ No

If so, provide the following information.

▶You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction? ☐ Yes ☑ No

If so, provide the following information.

▶ You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

▶ Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ☐ Yes ☑ No

If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ☐ Yes ☑ No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

▶ Do not report gifts given by members of your extended family.

▶ Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value

PLEASE RESPOND TO EACH QUESTION

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ☐ Yes ☑ No

If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

- ▶ Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."
- ▶ You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.
- ▶ Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such during 2008? ☐ Yes ☑ No

If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? ☑ Yes ☐ No

If so, please provide that information

With regard to Question 11, I (ToNola Brown-Bland) am a practicing attorney but not in private practice. I am the equivalent of an Assistant City Attorney for the City of Greensboro and therefore have not earned any legal fees.

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

**** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.****

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Guilford

Signed and sworn to or affirmed before me this day by ToNola Brown-Bland
(Name of Person Filing)

Date: 4-21-09
(Official Seal)

Official Signature of Notary Public

Notary's printed or typed name: Gloria P. Love

My Commission Expires: December 29, 2009

PLEASE RESPOND TO EACH QUESTION

Lorinzo Little Joyner

1304 Stony Point Lane, Cary, NC 27511
919.733.6050 (Work)
919.467.5053 (Home)
ljoyner@ncuc.net

Profile

Solid background in public service, with strong emphasis in utility law, regulation and policy. Experienced in managing complex and protracted utility proceedings and implementing state and federal regulatory law and policies.

Education

J.D., School of Law, University of North Carolina — *1978 -1981*
Chapel Hill

B.S., English Education — *1965 - 1969*
North Carolina A&T State University
Greensboro (with high honors)

Career History

Utilities Commissioner — *2001 – Present*
North Carolina Utilities Commission

Regulates public utilities consistent with the public interest as reflected in State law; arbitrates disputes involving competitive telecommunications carriers pursuant to delegated federal authority

Responds to requests for advice and information from the Governor and the General Assembly on matters relating to federal and state regulatory law and policies

Participates in national and regional forums on reliability and affordability of utility services, financial viability of regulated industries, universal service, broadband deployment, wireless consumer protection, clean coal technology

Special Deputy Attorney General[1] — *1986 – 2001*
North Carolina Department of Justice

Upon request, advised the Attorney General on matters related to Insurance and responded to requests for legal opinions from state agencies and public officials

Supervised the legal and support staff of the Insurance Section of the Attorney General's Office which provided a full range of legal services to various agencies, including the Departments of Insurance, Secretary of State, Commerce and the State Teachers' and Employees' Comprehensive Major Medical Plan

Assisted the Attorney General in formulating policy and positions on issues related to the regulation of public utilities operating in North Carolina; advocated the position of the Attorney General before the North Carolina Utilities Commission

---

[1] Originally appointed as an Associate and later promoted to Assistant and then Special Deputy. Aside from the addition of supervisory responsibilities, nature of legal services provided did not change.

Staff Attorney, Legal Division *1983 – 1986*
Public Staff – North Carolina Utilities Commission

Represented the interests of the using and consuming public before the North Carolina Utilities Commission; appealed adverse decisions to the Supreme Court of North Carolina and the North Carolina Court of Appeals

Assistant Appellate Defender *1981 – 1983*
Office of the Appellate Defender

Represented indigent criminal defendants appealing their convictions to the Supreme Court of North Carolina and the North Carolina Court of Appeals

Teacher *1969 – 1978*
Greensboro and Durham County

Taught high school English (grammar, composition and literature) to eleventh and twelfth grade students

Affiliations

North Carolina State Bar (licensed 1981)
Tenth Judicial Bar
Capital City Lawyers Association
National Association of Regulatory Utility Commissioners (NARUC)
NARUC Committee Appointments have focused on
- Natural Gas
- Clean Coal Technology
- Telecommunications
- Wireless Consumer Protection
- Consumer Affairs

National Regulatory Research Institute, Board of Directors
Gas Technology Institute
Ivy Community Service Foundation of Cary, Inc.
Alpha Kappa Alpha Sorority, Inc.
Watts Chapel Baptist Church

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 8, 2009

The Honorable Beverly E. Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

via e-mail

Re: Evaluation of Statements of Economic Interest Filed By **Ms. Lorinzo L. Joyner**

Dear Governor Perdue:

I am in receipt of Ms. Lorinzo L. Joyner's April 8, 2008, and April 14, 2009, Statements of Economic Interest as an appointee to the **North Carolina Utilities Commission ("Commission")**. I have reviewed them for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find a conflict of interest. However, I did find the potential for a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates complaints and incidents involving public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

Ms. Joyner is on the board of directors of other regulatory-related organizations, including the National Regulatory Research Institute (NRRI) and the National Association of Regulatory Utility Commissioners (NARUC). As such, she has the potential for a conflict of interest. In light of her involvement with these organizations, she should exercise appropriate caution should NRRI or NARUC come before the Commission for official action or otherwise seek to conduct business with the Commission. This would include recusing herself to the extent that these interests would influence or could reasonably appear to influence her actions.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

Please contact our office if you have any questions concerning this evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

Stacey A. Phipps
Attorney, SEI Unit

SAP: bc

cc: Ms. Lorinzo L. Joyner
Chairman of the Commission

RECEIVED
APR 14 2009
STATE ETHICS COMMISSION

2009
Statement of Economic Interest
("Long Form")

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
For assistance please call 919-715-2071 or e-mail: ethics.commission@doa.nc.gov.
An electronic version of this SEI and additional information about its completion are available on the Commission's website at www.ethicscommission.nc.gov.

CONTACT INFORMATION

Name of Person Filing	Lorinzo L. Joyner
Preferred Mailing Address[1]	1304 Stony Point Lane
	Cary, North Carolina 27511
Job Title/Employer	Commissioner, North Carolina Utilities Commission
Daytime Phone Number	(919) 733-6050
E-Mail Address	ljoyner@ncuc.net

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards on which you are serving or to which you are being considered for appointment:

North Carolina Utilities Commission

Please provide the following information concerning your spouse and other members of your immediate family.[2] If the information requested does not apply, please indicate "none."

Name (First, Last)[3]	Occupation	Employer	Business
Charles E. Joyner	Professor	College of Design, North Carolina State University	Public University

[1] **With the exception of judicial officers** (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] **Immediate family** includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) **that reside in your household.**

[3] Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

PLEASE RESPOND TO EACH QUESTION

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of 12/31/08 unless another time period is specified in the question.

- **Do not list the value of those assets or liabilities.**
- **Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.**

REAL ESTATE

1. Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more? ☑ Yes ☐ No If so, please list below.

Owner of Real Estate	Location by County and City	% Ownership Interest
Charles E. Joyner & Lorinzo L. Joyner	Wake County, Cary	100% Tenancy by the Entirety
Rachel Little Graham, Lorinzo L. Joyner, and Eunice Little McGee	Anson County, Ansonville	1/3 Interest, Tenancy in Common

2. Do you, your spouse, or members of your immediate family rent North Carolina real estate with a market value of $10,000 to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City
None		

PERSONAL PROPERTY

3. Within the preceding two years, have you, your spouse, or members of your immediate family sold or bought personal property with a market value of $10,000 or more to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the purchase or sale.

Identity of Purchaser	Identity of Seller	Nature and Location of Property
None		

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

4. Do you, your spouse, or members of your immediate family rent personal property with a market value of $10,000 to or from the State? ☐ Yes ☑ No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property
None		

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). Do you, your spouse, or members of your immediate family own interests in a publicly owned company valued at $10,000 or more? ☐ Yes ☑ No If so, please list below.

- ▶ Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.
- ▶ Do not disclose the value of your interests.

Owner of Interest	Name of Company
None	

5(b). Do you, your spouse, or members of your immediate family hold stock options in a publicly owned company valued at $10,000 or more? ☐ Yes ☑ No ☐ Listed Above If so, please list below.

- ▶ Do not disclose the value of the stock option(s).
- ▶ Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held
None	

PLEASE RESPOND TO EACH QUESTION

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)? ☐ Yes ☑ No If so, please list below.

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company
None		

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
None	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
None	

PLEASE RESPOND TO EACH QUESTION

VESTED TRUSTS

7. Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*? ☐ Yes ☑ No

If so, please list below.

▶ Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust
None		

LIABILITIES

8. Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness on your primary personal residence? ☑ Yes ☐ No

If so, please list below.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
Lorinzo L. Joyner	Vehicle Financing Agency
Charles E. Joyner	Vehicle Financing Agency: Commercial Bank

PLEASE RESPOND TO EACH QUESTION

II. OTHER DISCLOSURES

9. At anytime during 2008, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes? ☐ Yes ☑ No

If so, provide the following information.

► Do not list State boards or entities, or entities created by a political subdivision of the State.

► If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
None			

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2008 if that source was not previously listed in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income. Please do *not* include income received from the following sources:

► Capital gains
► Federal government retirement
► Military retirement
► Social security income

Recipient of Income	Name of Source	Business or Industry	Type of Income
Lorinzo L. Joyner	North Carolina Utilities Commission	State Regulatory Agency (Utilities Commissioner)	Salary
Charles E. Joyner	North Carolina State University	Public University (Professor)	Salary

PLEASE RESPOND TO EACH QUESTION

11. Are you are a practicing attorney? ☐ Yes ☑ No

If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2008.

( ) Administrative	( ) Admiralty	( ) Corporate	( ) Criminal
( ) Decedents' Estates	( ) Environmental	( ) Insurance	( ) Labor
( ) Local Government	( ) Real Property	( ) Securities	( ) Tax
( ) Tort litigation (including negligence)		( ) Utilities regulation	

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ☐ Yes ☑ No

If so, provide the following information for those services for which you charged or were paid over $10,000 during 2008.

Type of Business	Nature of Services Rendered
None	

13. As of December 31, 2008, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with your State board or employing entity? ☐ Yes ☑ No

If so, provide the following information.

▶ You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
None		

PLEASE RESPOND TO EACH QUESTION

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction? ☑ Yes ☐ No

If so, provide the following information.

► You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

► Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
See Attachment 1.		

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ☐ Yes ☑ No

If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction
None		

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ☐ Yes ☑ No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

► Do not report gifts given by members of your extended family.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value
None			

PLEASE RESPOND TO EACH QUESTION

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ☑ Yes ☐ No

If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

- ▶ Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."
- ▶ You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.
- ▶ Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
See Attachment 1.			

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such during 2008? ☐ Yes ☑ No

If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration
None			

19. Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? ☐ Yes ☑ No

If so, please provide that information

None

PLEASE RESPOND TO EACH QUESTION

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.**

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

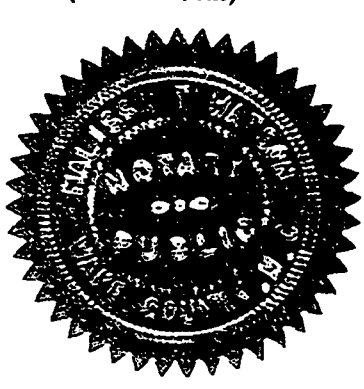
Lorinzo L Joyner
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by Lorinzo L. Joyner
(Name of Person Filing)

Date: April 14, 2009
(Official Seal)

Malissa T. Watson
Official Signature of Notary Public



Notary's printed or typed name: Malissa T. Watson

My Commission Expires: May 15, 2010

PLEASE RESPOND TO EACH QUESTION

2009 Statement of Economic Interest - Lorinzo Little Joyner

Attachment 1

II. OTHER DISCLOSURES

11. Are you a practicing attorney? If so, please check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during the preceding year.

Response:

While I am not a practicing attorney, I do hold a valid license to practice law in the State of North Carolina. However, as a Utilities Commissioner, pursuant to G.S. 62-10(i) and Canon 5.F of the Code of Judicial Conduct, I am prohibited from practicing law or engaging in any other employment, business, profession, or vocation while in office.

14. As of December 31, 2008, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction?

Response:

I served as a member of the Board of Directors of the National Regulatory Research Institute (NRRI). NRRI was originally established by the National Association of Regulatory Utility Commissioners (NARUC), which is an organization composed of members of all state agencies responsible for regulating public utilities and is generally regarded as the primary source through which education and training collaboratives for utility regulators are formed. NARUC created NRRI to further that objective. Although NRRI and NARUC are now corporately separate organizations, NRRI remains the state commissions' principal education and research resource. Its primary funding comes from voluntary dues paid by state commissions. Other funding comes from contract services performed for federal, state and foreign governmental units, as well as private industry and foundations. Its research efforts do not generally focus on state-specific issues but rather on broader industry-wide issues and on national regulatory policy. It does, however, provide educational seminars and training opportunities for member agencies upon request and for a fee. As a member of the Board of Directors, I assisted the Board in establishing NRRI's annual research agenda, budget, and major policies. Upon information and belief, NRRI does no business with the State, except to sponsor educational and training opportunities for the North Carolina Utilities Commission staff and commissioners. Except for these services and the dues payments that the Commission makes to NRRI, I am not aware of any other business dealings NRRI has with the State.

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a grant-in-aid to

attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

Response:

Date of Scholarship	Name and Address of Donor	Describe Event	Estimated Market Value
July 18, 2008	National Regulatory Research Institute, 8730 Georgia Ave., #201, Silver Spring, MD 20910	Board of Directors Meeting	$208.53
July 19-24, 2008	National Association of Regulatory Utility Commissioners, 1101 Vermont Ave., Suite 200, Washington, DC 20005	Travel Subsidy for 2008 Summer Meeting and Climate Change Conference	$672.13
November 14, 2008	National Regulatory Research Institute, 8730 Georgia Ave., #201, Silver Spring, MD 20910	Board of Directors Meeting	$284.46

HOUSE BILL 98
Committee Substitute Favorable 3/5/09
Committee Substitute #2 Favorable 3/19/09

Short Title: License Renewal/Active Military Duty. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF RESERVE COMPONENTS OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS AND TO ALLOW A THIRTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 30 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty ~~in the armed forces of the United States~~ and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the ~~armed forces~~ Armed Forces of the United States.

(2) A member of ~~the national guard or of~~ a reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

HOUSE BILL 98:
License Renewal/Active Military Duty

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 9, 2009
Introduced by:	Reps. Killian, Sager, Dollar, Burris-Floyd	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 98 would modify drivers license renewal provisions for members of the Armed Forces and reserve components of the Armed Forces who are on active duty in the following three ways:***

- ***Allow those members to renew a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.***
- ***Extend the validity of a drivers license that expired while the member was on active duty outside the State.***
- ***Allow an active duty reserve member stationed outside the State to renew a drivers license by mail. (Currently allowed for members of Armed Forces on active duty.)***

CURRENT LAW: G.S. 90-7(f)(3a) allows a person to apply to the Division of Motor Vehicles to renew a drivers license during the 180-day period before the license expires and prohibits the Division from accepting renewal applications before that period.

BILL ANALYSIS: House Bill 98 would amend existing motor vehicle law as follows:

Section 1 – Would add a new definition in Chapter 20 (Motor Vehicles) of the General Statutes, defining "Reserve components of the Armed Forces of the United States" and specifying that the definition includes the Army and Air National Guard.

Section 2 – Would add a new subdivision to G.S. 20-7(f) (Duration and Renewal of Licenses) to:

- Allow the Division of Motor Vehicles to renew the drivers license of a member of the Armed Forces or of a reserve component of the Armed Forces with orders placing the member on active duty outside of the State, regardless of the date of expiration of the license.
- Classify as valid a drivers license that expired while a member of the Armed Forces or of a reserve component of the Armed Forces was on active duty outside the State. The license would continue to be valid until 30 days after the date of release from active duty. Licenses that were revoked, rescinded or invalidated under some other provision of law would not be declared valid under this provision.

The bill would further amend G.S. 20-7(f) to allow reservists on active duty stationed outside of the State to renew their drivers license by mail, as is currently the case for active duty armed forces.

Sections 3 and 4 – Would capitalize the term Armed Forces wherever it occurs throughout Chapter 20 of the General Statutes.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to all licenses expiring on or after its effective date.

Ben Popkin, counsel to House Homeland Security, Military, and Veterans Affairs, contributed to this summary.

H98-SMSU-102(e3) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 98 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Rand
Sen.)

moves to amend the bill on page 1, line s 26-27

( ) WHICH CHANGES THE TITLE

by re writing the lines to read:

" until 30 days after the member of the Armed Forces or of a reserve component of the Armed Forces of the United States returns to this State, unless the license was rescinded, revoked, "

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1105
Committee Substitute Favorable 5/6/09
Committee Substitute #2 Favorable 5/12/09

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. 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 the replacement of lamps and fuses 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 receptacles which have been permanently installed. 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 any of the following:

(1) 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 replacement of lamps, fuses, and door gaskets.

(2) 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.

(3) ~~employees~~ 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.

(4) ~~The provisions of this Article shall not apply to any~~ 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(b) reads as rewritten:

"(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."

SECTION 4. G.S. 87-59(d) reads as rewritten:

"(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."

SECTION 5. 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 6. 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 7. 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 8. 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 9. Section 3 of this act becomes effective October 1, 2009. Section 5 of this act becomes effective December 1, 2009, and applies to offenses occurring on or after that date. Section 8 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:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 9, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1105 would amend the laws regulating refrigeration contractors.

CURRENT LAW: Article 5 of Chapter 87 of the General Statutes deals with refrigeration contractors. It creates the State Board of Refrigeration Examiners and requires that persons and corporations apply to the Board and get a license before engaging in refrigeration business or contracting. The Article also provides for revocation or suspension of licenses for cause. A violation of the Article is currently a Class 2 misdemeanor, and the Board may also seek injunctive relief when appropriate.

BILL ANALYSIS: House Bill 1105 would amend Article 5 of Chapter 87 in the following ways:

Section 1 would provide that the definition of "refrigeration trade business" does not include either of the following:

- 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, 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 would provide that regular examinations for licensing in refrigeration are to be given in the office of the Board by appointment (currently, exams are given in the months of April and October annually and additionally as the Board deems necessary).

Section 3 would require the Board to adopt and publish rules and regulations consistent with the provisions of Article 5 and Chapter 150B (currently, the Board must adopt guidelines consistent with Article 5). This section would become effective October 1, 2009.

Section 4 would provide that when the Board accepts an offer to compromise a charge against a licensee where the accused pays a penalty to the Board, the penalty funds are to be remitted to the Civil Penalty and Forfeiture Fund (was the General Fund).

Section 5 would change the penalty for violations of Article 5 from a Class 2 misdemeanor to a Class 3 misdemeanor. This section would become effective December 1, 2009, and would apply to offenses occurring on or after that date.

Section 6 would authorize the Board to employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3, which requires agencies of the State to obtain written permission from the Attorney General prior to employing private counsel.

Section 7 would authorize 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 Council of State. Collateral pledged by the Board for an encumbrance would be limited to the assets, income, and

revenues of the Board. This section would also provide that the Board may rent or purchase equipment and supplies, and purchase insurance to cover its activities, operations, or employees.

Section 8 would allow the Board to require, as part of the renewal of a license, that licensees complete continuing education in subjects related to refrigeration contracting. This section would become effective January 1, 2012.

EFFECTIVE DATE: Except as otherwise indicated, this act would be effective when it becomes law.

Brad Krehely, counsel to House Commerce, Small Business, and Entrepreneurship, and Trina Griffin, counsel to House Finance, contributed to this summary.

H1105-SMSU-105(e3) v2

HOUSE BILL 1094
Committee Substitute Favorable 4/30/09

Short Title: Require Documentation-Certain Special Plates. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT SPECIAL PLATES THAT ARE AVAILABLE TO MILITARY VETERANS ARE ISSUED ONLY TO APPROPRIATE APPLICANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4 reads as rewritten:

"...

(a1) Qualifying for a Special Plate. – In order to qualify for a special plate, an applicant shall meet all of the qualifications set out in this section. The Division of Motor Vehicles shall verify the qualifications of an individual to whom any special plate is issued to ensure only qualified applicants receive the requested special plates.

(a2) Special Plates Based Upon Military Service. – The Division of Veterans Affairs shall be responsible for verifying and maintaining all verification documentation for all special plates that are based upon military service. The Division shall not issue a special plate that is based on military service unless the application is accompanied by a motor vehicle registration (MVR) verification form signed by the Director of the Division of Veterans Affairs, or the Director's designee, showing that the Division of Veterans Affairs has verified the applicant's credentials and qualifications to hold the special plate applied for.

(1) Unless a qualifying condition exists requiring annual verification, no additional verification shall be required to renew a special registration plate either in person or through an online service.

(2) If the Division of Veterans Affairs determines a special registration plate has been issued due to an error on the part of the Division of Motor Vehicles, the plate shall be recalled and canceled.

(3) If the Division of Veterans Affairs determines a special registration plate has been issued to an applicant who falsified documents or has fraudulently applied for the special registration plate, the Division of Motor Vehicles shall revoke the special plate and take appropriate enforcement action.

...."

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

HOUSE BILL 1094:
Require Documentation-Certain Special Plates

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 9, 2009
Introduced by:	Rep. Justus	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1094 would require the Division of Motor Vehicles to ensure that the recipient of a special plate is eligible for the plate, and it would require the Division of Veteran Affairs to verify and maintain documentation related to eligibility for special plates based upon military service.***

BILL ANALYSIS: House Bill 1094 would require the Division of Motor Vehicles (DMV) to have overall responsibility for ensuring that only those eligible for special plates are issued the plates. The bill would prohibit DMV from issuing special plates based upon military service unless the application is accompanied by a form showing that the Division of Veterans Affairs has verified the applicant's credentials and qualifications. The bill would provide that:

- No additional verification is necessary for renewal.
- Plates issued erroneously must be recalled.
- If the DMV determines that a plate was issued through misrepresentations of fact, or otherwise procured by fraud, then the plate must be revoked and appropriate enforcement action taken.

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

H1094-SMSU-103(e2) v1

Title change in amendment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 682
Committee Substitute Favorable 4/16/09

Short Title: Adjust Conflict Threshold. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE EXEMPTION LIMITS FOR SMALL LOCAL GOVERNMENTS IN THE PUBLIC CONTRACTING STATUTES TO ACCOUNT FOR INFLATION SINCE LAST ADJUSTED SEVEN YEARS AGO, TO ALLOW AUTOMATIC ADJUSTMENTS TO ACCOUNT FOR FUTURE CHANGES IN THE CONSUMER PRICE INDEX, AND TO PROVIDE A UNIFORM PROCEDURE FOR INFLATION INDEXING THAT OTHER PROVISIONS MAY INCORPORATE BY REFERENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234(d1) reads as rewritten:

"(d1) Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if all of the following apply:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed ~~twelve thousand five hundred dollars ($12,500)~~ fourteen thousand five hundred dollars ($14,500) for medically related services and ~~twenty-five thousand dollars ($25,000)~~ thirty thousand dollars ($30,000) for other goods or services within a 12-month period. The dollar amounts in this subdivision are subject to the inflation indexing provisions of G.S. 12-5.

which shall be effective for the dollar amounts in this subdivision on January 1, 2011.

(2) The official entering into the contract with the unit or agency does not participate in any way or vote.

(3) The total annual amount of contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county.

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

SECTION 2. Chapter 12 of the General Statutes is amended by adding a new section to read:

"**§ 12-5. Uniform value change indexing.**

For every statute that expressly references this section for the purpose of value change indexing of a dollar amount, the dollar value to which the statute refers shall be determined in accordance with this section. To account for changes in the value of money, the Attorney General shall each year apply the percentage change in the Consumer Price Index for All Urban Consumers for the 12-month period preceding July 1 to the dollar amounts set out in each statute that expressly references this section, or to the most recent revisal of those dollar amounts, whichever is the latter. The Attorney General shall cause those adjusted amounts to be published in the North Carolina Register as soon as practicable. The Attorney General shall also notify the Revisor of Statutes. The revised amount shall be applicable to each of those statutes beginning January 1 of the next year and until January 1 of the following year. The Revisor of Statutes shall cause to be published a revision of the statute with the revised amount substituted for the previous amount."

SECTION 3. This act becomes effective October 1, 2009.

HOUSE BILL 682:
Adjust Conflict Threshold

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 8, 2009
Introduced by:	Rep. Guice	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 682 would raise the dollar thresholds for exempting local government officials in small towns and counties from the criminal prohibition on deriving a direct benefit from a public contract the officials are involved in making or administering. The bill would also provide a uniform statute for automatic cost-of-living adjustments that could be referenced by other statutes. It would apply that uniform cost-of-living adjustment to the conflict of interest thresholds.***

CURRENT LAW: G.S. 14-234(a)(1) says, "No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law." Violation is a Class 1 misdemeanor.

G.S. 14-234(d1), later in the same statute, exempts from the "no direct benefit" prohibition various public officials, most of them in small towns and counties, if the amount of the agreement between the government and the official does not exceed the following within a 12-month period:

- $12,500 for medically related services.
- $25,000 for other goods and services.

The public officials exempted are the following:

- Any holder of an elective municipal office or member of a city school board in a municipality of no more than 15,000 population.
- Any holder of an elective county office or member of a county school board in a county that contains no municipality of more than 15,000.
- A physician or member of other listed medical professions appointed to a local social services board, health board, or area mental health, developmental disabilities, and substance abuse board in a county containing no municipality of more than 15,000.
- Any member of a board of directors of a public hospital, regardless of the population.

The exemption is not available unless the agreement is entered into publicly, the official entering into the contract abstains from participating or voting, the contract is disclosed in the audited financial report of the local government and in a conspicuous public posting.

BILL ANALYSIS: House Bill 682 would raise the dollar thresholds for contracts exempted from the conflict-of-interest prohibition from $12,500 to **$14,500** for medically related services and raise it from $25,000 to **$30,000** for other goods and services.

The bill would also enact a new statute, in GS Chapter 12, providing a uniform automatic procedure for changes in the value of money – inflation or deflation indexing. The procedure could be expressly referenced in other statutes so that it would automatically change the dollar amounts in those statutes. The uniform method would be based on the Consumer Price Index. It would automatically change the dollars amounts, effective January 1 of every year, based on the percentage change in the CPI for the 12 months preceding July 1 of the previous year. The new rates in all the affected statutes would be published annually in the North Carolina Register as soon as practicable after July 1, and the Revisor of Statutes would be required to make the new dollar threshold a part of each statute. The bill would apply the uniform statute to the threshold amounts in the conflict of interest statute, effective January 1, 2011.

EFFECTIVE DATE: October 1, 2009.

*This summary was substantially contributed to by Mr. Bill Gilkeson, Staff Attorney,

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

page 1 of 2

EDITION No. _____

H. B. No. 682 DATE 6/9/09

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Rand

moves to amend the bill on page 1, lines 6-7

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"PRICE INDEX."

and on p1, lines 35 through p. 2 line 2

by rewriting those lines to read:

"others goods or services within a 12-month period.";

and 2 lines 18 - 32

by deleting those lines;

and by renumbering the remaining bill sections accordingly;

and on page 1, line 32-33 by deleting "fourteen thousand five hundred dollars ($14,500)" and substituting "twenty thousand dollars ($20,000)"

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. page 2 of 2

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Rand
Sen.)

1 moves to amend the bill on page _____, line _____
2 ( ) WHICH CHANGES THE TITLE
3 by and on page 1, line 34
4 by deleting "thirty thousand dollars ($30,000)" and
5 substituting "forty thousand dollars ($40,000)".
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SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE COMMERCE COMMITTEE
Thursday, June 11, 2009 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on June 11, 2009, in Room 1027 of the Legislative Building. Twenty-four members of the committee were present. Senator R.C. Soles presided. Katherine Speight of Winston-Salem, Coralie Watts of Gastonia, Kenya Hale of Halifax, Elyse Marder of Gastonia, BJ Williams of Greensboro, Sayre Olson of Raleigh, Ian Halfpenny of Huntersville, Anna Paschall of Gastonia, Travis Curlin of El Paso, TX and Cristian Apodaca of El Paso, TX served as pages.

SB 534 – Healthy Families and Healthy Workplaces Act.

Senator Dorsett was recognized to explain the bill which was taken up for discussion only. The bill provides 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. Anna Mercer-McLean, director of the Community School for People Under Six, was recognized to speak in favor of the bill. Diana Hatch, president of AARP North Carolina, was recognized to speak in favor of the bill. Louisa Warren, NC Justice Center, was recognized to answer questions. A copy of the bill and the summary is attached.

HB 1210 – Facilitate Access to Emergency Supplies.

Representative Cole was recognized to explain the bill. It facilitates obtaining federal waivers that are necessary to ensure adequate gasoline supplies throughout the State; allows 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 makes various other changes that will facilitate populace access to emergency supplies and services. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1079 – Energy Efficient State Motor Vehicle Fleet.

Representative Tillis and Representative Martin were recognized to explain the bill. It requires the Department of Administration to give preference to new passenger motor vehicles that have a fuel economy that is in the top 15% of that class of comparable automobiles for passenger motor vehicles purchased by the State. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 682 – Adjust Conflict Threshold.

Representative Guice was recognized to explain the bill. Senator Rand moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS adjust the exemption limits for small local governments in the public contracting statutes to account for inflation since last adjusted seven years ago. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 780 – Building Coe/Exempt Equestrian Arenas.

Representative Brubaker was recognized to explain the bill. Senator Apodaca moved to adopt the PCS for discussion and the motion carried. The PCS clarifies the North Carolina Building Code exemption for farm buildings to include equine arenas used for lessons offered to the general public, and other equine activities, but not for spectator events; and provides that in the case of a mandatory evacuation a tenant subject to a vacation rental agreement is entitled to a refund of a prorated rent, taxes, and other payments made by the tenant for the occupation of the vacation rental unit. Senator Jenkins moved to adopt the PCS and report it favorably. The motion carried. A copy of the PCS and the summary is attached.

HB 1159 – Insurance Licensing Changes – AB.

Senator Vaughan was recognized to explain the bill. It clarifies the laws on insurance business entity licenses; provides for electronic filings with the Department of Insurance; and clarifies the law on appointment of agents by insurance companies. Senator Apodaca moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1161 – Revise Insurance Financial Conditions.

Senator Vaughan was recognized to explain the bill. The bill makes changes in the laws related to the financial conditions of insurance companies, including reinsurance intermediaries, receivership, third-party administrators and audits of workers' compensation self-insurers, and foreign insurers. Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1164 – Modernize HMO Oversight Requirements.

Senator Vaughan was recognized to explain the bill which was requested by the Commissioner of Insurance to eliminate obsolete data collection requirements for health maintenance organizations. Senator Clary moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1165 – Update Standard Fire Insurance Policy – AB.

Senator Vaughan was recognized to explain the bill. The bill codifies the provisions set forth in the photographic version of the standard fire insurance policy, makes conforming amendments; and repeals the statute that contains the photographic version of the standard fire insurance policy. Rose Vaughn Williams, legislative counsel for the Department of Insurance, was recognized to answer questions. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1183 – Health and Other Insurance Law Changes – AB.

Senator Vaughan was recognized to explain the bill. Senator Apodaca moved to adopt the PCS for discussion and the motion carried. The PCS makes various changes in the laws governing health insurance and managed care; changes certain health insurance laws to comport with recent congressional enactments; makes a technical correction in a credit insurance law; conforms motor vehicle inspection compliance requirement with the discontinuation of stickers; and repeals the expiration date of the Interstate Insurance Product Regulation Compact Act. Rose Vaughn Williams was recognized to answer questions. Ted Hamby, Deputy Commissioner of

the Life and Health Division of the Department of Insurance, was recognized to answer questions. Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 1313 – Regulate Public Adjusters – AB.

Senator Vaughan was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS provides for meaningful regulation of insurance pubic adjusters. Rose Vaughn Williams was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

HB 1314 – Annual Financial Reporting – AB.

Senator Vaughan was recognized to explain the bill. Senator Purcell moved to adopt the PCS for discussion and the motion carried. The PCS improves the Insurance Commissioner's ability to monitor the financial condition of insurers. Rose Vaughn Williams was recognized to answer questions. Senator Apodaca moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 10:02 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 11, 2009	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 534	Healthy Families and Healthy Workplaces Act.	Senator Dorsett
HB 682	Adjust Conflict Threshold.	Representative Guice
HB 780	Building Code/Exempt Equestrian Arenas.	Representative Brubaker
HB 1159	Insurance Licensing Changes.-AB	Representative Goforth Representative Wray
HB 1161	Revise Insurance Financial Conditions.-AB	Representative Goforth Representative Wray
HB 1164	Modernize HMO Oversight Requirements.	Representative Goforth Representative Wray
HB 1165	Update Standard Fire Insurance Policy.-AB	Representative Goforth Representative Wray
HB 1183	Health and Other Insurance Law Changes.-AB	Representative Goforth Representative Wray
HB 1210	Facilitate Access to Emergency Supplies.	Representative Cole
HB 1313	Regulate Public Adjusters.-AB	Representative Goforth Representative Wray
HB 1314	Annual Financial Reporting.-AB	Representative Goforth Representative Wray

HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Gibson, III Representative Grady Representative Owens, Jr.
HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Justus Representative Johnson Representative Brisson

Senator R. C. Soles, Jr., Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, June 11, 2009

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

FAVORABLE

H.B.(CS #2) **1079** Energy-Efficient State Motor Vehicle Fleet.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1159** Insurance Licensing Changes.-AB
Sequential Referral: None
Recommended Referral: Finance

H.B.(CS #2) **1161** Revise Insurance Financial Conditions.-AB
Sequential Referral: None
Recommended Referral: None

H.B. **1164** Modernize HMO Oversight Requirements.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1165** Update Standard Fire Insurance Policy.-AB
Sequential Referral: None
Recommended Referral: None

H.B. **1210** Facilitate Access to Emergency Supplies.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 6

Committee Clerk Comments:

H1079 – Sen. Clodfelter
H1159 – Sen. Vaughan
H1161 – Sen. Vaughan
H1164 – Sen. Vaughan
H1165 – Sen. Vaughan
H1210 – Sen. Jenkins

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, June 15, 2009

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

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

H.B. **1314** Annual Financial Reporting.-AB

Draft Number:	50735
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **682** Adjust Conflict Threshold.

Draft Number:	50733
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **780** Building Code/Exempt Equestrian Arenas.

Draft Number:	80466
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1183** Health and Other Insurance Law Changes.-AB

Draft Number:	11002
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1313** Regulate Public Adjusters.-AB

Draft Number:	80467
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

H682 – Sen. Snow
H780 – Sen. Vaughan
H1183 – Sen. Vaughan
H1313 – Sen. Vaughan
H1314 – Sen. Vaughan

Senate Commerce Committee
Thursday, June 11, 2009, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 682	Adjust Conflict Threshold.	Rep. Guice
HB 780	Building Code/Exempt Equestrian Arenas.	Rep. Brubaker
HB 1079	Energy-Efficient State Motor Vehicle Fleet.	Rep. Martin Rep. Harrison Rep. Samuelson Rep. Tillis
HB 1159	Insurance Licensing Changes.-AB	Rep. Goforth Rep. Wray
HB 1161	Revise Insurance Financial Conditions.-AB	Rep. Goforth Rep. Wray
HB 1164	Modernize HMO Oversight Requirements.	Rep. Goforth Rep. Wray
HB 1165	Update Standard Fire Insurance Policy.-AB	Rep. Goforth Rep. Wray
HB 1183	Health and Other Insurance Law Changes.-AB	Rep. Goforth Rep. Wray
HB 1210	Facilitate Access to Emergency Supplies.	Rep. Cole
HB 1313	Regulate Public Adjusters.-AB	Rep. Goforth Rep. Wray
HB 1314	Annual Financial Reporting.-AB	Rep. Goforth Rep. Wray
HB 1409	Building Code Exclusion/Certain Wiring.	Rep. Justice Rep. Gibson Rep. Grady Rep. Owens
HB 1410	Building Code Exclusion/Hot Water Heaters.	Rep. Justice Rep. Justus Rep. Johnson Rep. Brisson
SB 534	Healthy Families and Healthy Workplaces Act.	Sen. Dorsett

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bob Ford	NC Poultry Fed
Henry Jones	Attorney - Raleigh
Joseph Lueders	PBV
Lauren Whaley	NC Credit Union League
Cady Thomas	NC Assn of Realtors
Rick Zechini	
Jim Blackburn	Friend of Cady & Rick
Christy Agner	Dept of Admin.
John Quinterro	NCBTC
Tom Vaughn	Action for Children
Joe Stewart	NC chamber
John McAlister	NC chamber
John Alley	NMRS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ann Lore	OVCE
Martha A. McKenzie	CTIS
Bill McAulay	PSNC Energy
Evelyn Shelley	CSPVG Orange Cty
Anna Mercer-McLean	Comm. Sch. for People under 6 Chapel Hill, NC
Jennifer Cohen	IFNC
Polly Williams	Triangle Older Women's League
Mary Bethea	AARP-NC
Etta P Maynard	NCDOT
Angela C. Ford	NCDOT
Chris Niles	NC DoT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rob Savitt	NC Child Care Coalition
Chip Killian	Nelson Mullins
Patrick Buffkin	" "
George Teague	"

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
James C. Wrenn	Sen. D. Berger's office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Stone	SEGMC
John Palinski	NCAMA
Chris Hollis	K+L Gates
Daniel Baum	K+L GATES

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Victoria Hawkins	Bode & Assoc.
Bill Rowe	NC Justice Center
[signature]	NCIC
[signature]	NRR
David Barnes	Pryor Sprouse
Connie Wilson	ECNC
Steven Waters	Living Streets
Jeff Mixon	Civitas
DAVE Simpson	CAGC
ROBERT BLACKBURN	ANCBH

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 11, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Hartzell	Environment North Carolina
Dennie D. Habeck	AARP + OWL
Louisa Warren	NC Justice Center
Elizabeth Dalton	NCRLA
John Monaghan	Piedmont Natural Gas Company
MaryBe McMillan	NC AFL-CIO
Brittany Farrell	NCFPC
Stephen Wohlers	DOI
TED HAMBY	NCDOI
TONY RIDDICK	NCDOI
JEFFREY TRENDEL	NCDOI

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ACSR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 11, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dale Dawson	State Board of Exam P, H+FS
Nick Fountain	Young Moore & Henderson
Jennifer Haigwood	NCDOL
John Hamani	NCDOL
Meredith Cook	NCDOL

SENATE BILL 534*

Short Title:	Healthy Families and Healthy Workplaces Act.	(Public)
Sponsors:	Senators Dorsett; Atwater, Berger of Franklin, Bingham, Dannelly, Davis, Goss, Kinnaird, Malone, McKissick, Nesbitt, Purcell, Rand, and Snow.	
Referred to:	Commerce.	

March 12, 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.

SENATE BILL 534:
Healthy Families and Healthy Workplaces Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 9, 2009
Introduced by:	Sen. Dorsett	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 534 would enact the Healthy Families and Workplaces Act which would provide paid sick days for all workers.***

[As introduced, this bill was identical to H177, as introduced by Reps. Adams, Ross, Blue, Wainwright, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Health.]

BILL ANALYSIS: Senate Bill 534 would enact a new Article in Chapter 95 of the General Statutes, Article 3A the "Healthy Families and Healthy Workplace Act," that would provide mandatory sick days for employees in the State.

Section 1:

- **Creates a public policy statement and a definitions section.**
- **Provides the following exemptions:**
  - Bona fide volunteers in any organization where there is no employer-employee relationship.
  - People who are exempt from various sections of the Wage and Hour Act, including agricultural workers, correctional workers, actors, fisherman, computer systems analysts, professional employees under the Fair Labor Standards Act, volunteer firefighters, and taxi drivers. Domestic workers are exempt only if they are employed in the place of residence of their employer.
- **Paid Sick Time** - Begins to accrue at the start of employment at a rate of 1 hour of paid sick time for every 30 hours worked. The time carries over from year to year, but are subject to the following maximums:
  - 32 hours per year for employees of small business. A small business is defined as an employer with 10 or fewer employees during 20 or more calendar workweeks.
  - 56 hours for all other employees.
- **Use of Paid Sick Time** - An employee may use paid sick time to care for the employee's own health, or the health of an immediate family member unless the care is covered by federal law. An employee may use paid sick time to address effects, on the employee or the employee's immediate family member, of domestic violence, sexual assault, or stalking.
  - An employer may require certification when paid sick time covers more than 3 consecutive workdays. Employers may not require certification from a health care provider employed by the employer.

- An employer may not condition providing paid sick time on either of the following:
  - Requiring the disclosure of the details of domestic violence, sexual assault, or stalking details or details of an employee's medical condition.
  - Requiring that the employee find a replacement worker to cover the employee's hours while the employee is on sick leave.
- The employee must make a good faith effort to provide notice when the use of sick time is foreseeable.
- The act is the minimum requirement for sick time and does not preempt other laws/policies that give greater protections to employees. An employer is not required to modify a current sick time policy that offers greater protections to employees.

- **Notification, posting, and records** - Notice, in English and Spanish, must be provided to each employee or may be posted in a conspicuous and accessible place and must contain of all of the following:
  1. Employees are entitled to paid sick time.
  2. Amount of paid sick time and terms of its use.
  3. Retaliation against employees who request sick time is prohibited.
  4. Each employee's right to file a complaint with the Commissioner of Labor or in court if sick time wrongfully denied or if employee is retaliated against for taking paid sick time.
- **Enforcement** - Commissioner of Labor is charged with enforcement and adopting rules.
- **Employer Liability** - Any employer who violates the Act is liable to the employee for the amount of unpaid sick time plus interest.
  - **Liquidated damages** - In actions before the courts, plaintiff could receive liquidated damages, but the court may decide not to award liquidated damages if the employer shows that the employer has reasonable grounds to believe that the act or omission was not in violation of the ace (i.e. damages for breach of contract).
  - **Costs and attorneys' fees** - Costs and reasonable attorneys' fees may be charged to the defendant (or plaintiff if plaintiff files a frivolous suit).
- **Statute of limitations** - Claims must be brought within 2 years.

Section 2 makes conforming changes.

EFFECTIVE DATE: 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.

Brad Krehely, counsel to House Commerce, substantially contributed to this summary.

S534-SMTD-58(e1) v4

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.

HOUSE BILL 1210:
Facilitate Access to Emergency Supplies

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 27, 2009
Introduced by:	Rep. Cole	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

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.

Ben Popkin, counsel to House Homeland Security, Military, and Veterans Affairs, substantially contributed to this summary.

H1210-SMRO-108(e1) v1

HOUSE BILL 1079
Committee Substitute Favorable 4/27/09
Committee Substitute #2 Favorable 4/29/09

Short Title: Energy-Efficient State Motor Vehicle Fleet. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO GIVE PREFERENCE TO NEW PASSENGER MOTOR VEHICLES THAT HAVE A FUEL ECONOMY THAT IS IN THE TOP FIFTEEN PERCENT OF THAT CLASS OF COMPARABLE AUTOMOBILES FOR PASSENGER MOTOR VEHICLES PURCHASED BY THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-341(8) reads as rewritten:

"(8) General Services:

...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

2a. Every new motor vehicle transferred to or purchased by the Department that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in G.S. 143-58.4. This sub-sub-subdivision does not apply if the intended use, as determined by the Department, of the new motor vehicle requires a type of vehicle for which an express manufacturer's warranty allows the use of B-20 fuel is not available.

2b. As used in this sub-sub-subdivision, "fuel economy" and "class of comparable automobiles" have the same meaning as in Part 600 of Title 40 of the Code of Federal Regulations (July 1, 2008 Edition). As used in this sub-sub-subdivision, "passenger motor vehicle" has the same meaning as "private passenger vehicle" as defined in G.S. 20-4.01.

Notwithstanding the requirements of sub-sub-subdivision 2a. of this sub-subdivision, every request for proposals for new passenger motor vehicles to be purchased by the Department shall state a preference for vehicles that have a fuel economy for the new vehicle's model year that is in the top fifteen percent (15%) of its class of comparable automobiles. The award for every new passenger motor vehicle that is purchased by the Department shall be based on the Department's evaluation of the best value for the State, taking into account fuel economy ratings and life cycle cost that reasonably consider both projected fuel costs and acquisition costs. This sub-sub-subdivision does not apply to vehicles used in law enforcement, emergency medical response, and firefighting. The Department shall report the number of new passenger motor vehicles that are purchased as required by this sub-sub-subdivision, the savings or costs for the purchase of vehicles to comply with this sub-sub-subdivision, and the quantity and cost of fuel saved for the previous fiscal year on or before October 1 of each year to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission.

~~2a.~~2c. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

...."

SECTION 2. The first report required under G.S. 143-34(8)i.2b. shall be due on or before October 1, 2011.

SECTION 3. This act becomes effective July 1, 2010, and applies to contracts to purchase passenger motor vehicles on or after that date.

HOUSE BILL 1079:
Energy-Efficient State Motor Vehicle Fleet

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 11, 2009
Introduced by:	Reps. Harrison, Martin, Tillis, Samuelson	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1079 would require the Department of Administration to give preference to new passenger motor vehicles that have a fuel economy that is in the top fifteen percent of that class of comparable automobiles for passenger motor vehicles purchased by the State. The bill would require that every request for proposal for new passenger motor vehicles to be purchased by the Department include a preference for fuel efficiency and would require that the contract award for newly purchased passenger motor vehicles be based on the best value for the State.

CURRENT LAW: Current law does not require the Department of Administration to consider fuel economy during the acquisition of new passenger motor vehicles.

BILL ANALYSIS: House Bill 1079 would require that every request for proposals for new passenger motor vehicles to be purchased by the Department include a preference for vehicles that have a fuel economy for the new vehicle's model year that is in the top 15% of its class of comparable automobiles.

The bill would also provide that a contract awarded for a new passenger vehicle is to be based on the Department's evaluation of the best value for the State, taking into account fuel economy ratings and life cycle cost that reasonably consider both projected fuel costs and acquisition costs.

The new passenger motor vehicle acquisition requirements would not apply to vehicles used in law enforcement, emergency medical response, and firefighting.

The Department of Administration would also be required to prepare and submit an annual report for the previous fiscal year, beginning October 1, 2011, to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission that would include:

- The number of new passenger motor vehicles that are purchased under this act.
- The savings or costs for the purchase of vehicles to comply with this act.
- The quantity and cost of fuel saved.

EFFECTIVE DATE: The act would become effective July 1, 2010 and would apply to contracts to purchase passenger motor vehicles on or after that date.

Jennifer Mundt and Shirley Iorio substantially contributed to this summary.

H1079-SMSU-108(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 682
Committee Substitute Favorable 4/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H682-CSRG-41 [v.1]

6/10/2009 6:55:51 PM

Short Title: Adjust Conflict Threshold. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE EXEMPTION LIMITS FOR SMALL LOCAL GOVERNMENTS IN THE PUBLIC CONTRACTING STATUTES TO ACCOUNT FOR INFLATION SINCE LAST ADJUSTED SEVEN YEARS AGO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234(d1) reads as rewritten:

"(d1) Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if all of the following apply:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed ~~twelve thousand five hundred dollars ($12,500)~~ twenty thousand dollars ($20,000) for medically related services and ~~twenty-five thousand dollars ($25,000)~~ forty thousand dollars ($40,000) for other goods or services within a 12-month period.

(2) The official entering into the contract with the unit or agency does not participate in any way or vote.

(3) The total annual amount of contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county.

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

SECTION 2. This act becomes effective October 1, 2009.

HOUSE BILL 682:
Adjust Conflict Threshold

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 10, 2009
Introduced by:	Rep. Guice	**Prepared by:**	Tim Hovis*
Analysis of:	PCS to Second Edition H682-CSRG-41		Committee Counsel

SUMMARY: ***House Bill 682 would raise the dollar thresholds for exempting local government officials in small towns and counties from the criminal prohibition on deriving a direct benefit from a public contract the officials are involved in making or administering.***

CURRENT LAW: G.S. 14-234(a)(1) says, "No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law."

G.S. 14-234(d1), later in the same statute, exempts from the "no direct benefit" prohibition various public officials, most of them in small towns and counties, if the amount of the agreement between the government and the official does not exceed the following within a 12-month period:

- $12,500 for medically related services.
- $25,000 for other goods and services.

The public officials exempted are the following:

- Any holder of an elective municipal office or member of a city school board in a municipality of no more than 15,000 population.
- Any holder of an elective county office or member of a county school board in a county that contains no municipality of more than 15,000.
- A physician or member of other listed medical professions appointed to a local social services board, health board, or area mental health, developmental disabilities, and substance abuse board in a county containing no municipality of more than 15,000.
- Any member of a board of directors of a public hospital, regardless of the population.

The exemption is not available unless the agreement is entered into publicly, the official entering into the contract abstains from participating or voting, the contract is disclosed in the audited financial report of the local government and in a conspicuous public posting.

BILL ANALYSIS: House Bill 682 would raise the dollar thresholds for contracts exempted from the conflict-of-interest prohibition from $12,500 to $20,000 for medically related services and raise it from $25,000 to $40,000 for other goods and services.

EFFECTIVE DATE: December 1, 2009.

*This summary was substantially contributed to by Mr. Bill Gilkeson, Staff Attorney.

H682-SMRG-68(CSRG-41) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 780
Committee Substitute Favorable 4/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H780-CSRG-42 [v.2]

6/10/2009 8:46:17 PM

Short Title: Building Code/Exempt Equestrian Arenas. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE NORTH CAROLINA BUILDING CODE EXEMPTION FOR FARM BUILDINGS TO INCLUDE EQUINE ARENAS USED FOR LESSONS OFFERED TO THE GENERAL PUBLIC, AND OTHER EQUINE ACTIVITIES, BUT NOT FOR SPECTATOR EVENTS, AND TO PROVIDE THAT IN THE CASE OF A MANDATORY EVACUATION A TENANT SUBJECT TO A VACATION RENTAL AGREEMENT IS ENTITLED TO A REFUND OF THE PRORATED RENT, TAXES, AND OTHER PAYMENTS MADE BY THE TENANT FOR THE OCCUPATION OF THE VACATION RENTAL UNIT.

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.

(b1) ~~In addition, the~~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.

(b2) 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.

(b3) The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

(b4)~~Provided further, that building~~ 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. For the purposes of this subsection:

(1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses, and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. A farm building that might otherwise qualify for exemption from building rules shall not be exempt if it is used for a spectator event and more than 10 members of the public are present at the farm building for the event.

(2) 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.

(b5)~~Provided further, that no~~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.

(b6)~~Provided further, that no~~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.

(b7) ~~In addition, the~~ 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.

(b8) 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.

(b9) 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.

(b10) ~~In addition, the~~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.

(b11) 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. 42A-36 reads as rewritten:

"**§ 42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the ~~prorated rent~~ rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total ~~rent~~ amount charged for the vacation rental to the ~~tenant.~~tenant less the amount paid by the tenant for a security deposit."

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to all farm buildings, including farm buildings where construction either began or was completed prior to the effective date of this act.

HOUSE BILL 780:
Building Code/Exempt Equestrian Arenas

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 10, 2009
Introduced by:	Rep. Brubaker	**Prepared by:**	Tim Hovis*
Analysis of:	PCS to Second Edition H780-CSRG-42		Committee Counsel

SUMMARY: ***House Bill 780 would amend the State Building Code to clarify that the term "farm buildings" includes structures that are used for equine activities, and are exempt from the building rules if located outside of a municipality.***

The Proposed Committee Substitute adds Section 2 to provide that if a mandatory evacuation of an area is ordered by State or local authorities, the tenant of a vacation rental is entitled to a prorated refund from the landlord not just of rent, but also of taxes and any other payments made by the tenant pursuant to the vacation rental agreement.

The PCS also makes changes to the current law governing the cost of insurance offered by a landlord to insure the tenant against loss resulting from an evacuation.

CURRENT LAW: Farm buildings that are outside the building-rules jurisdiction of a municipality are excluded from the State Building Code. A "greenhouse" is the only type of "farm building" inside a building-rules jurisdiction that is exempt from the building-rules jurisdiction of a municipality.

With regard to the mandatory evacuation of vacation rental properties, current law provides that a tenant is entitled to a refund of prorated rent. The tenant is not entitled to a refund if the tenant refused insurance offered by the landlord for losses resulting from loss of use of the property due to evacuation or if the tenant purchased insurance offered by the landlord. The cost of the insurance may not exceed 8% of the total rent.

BILL ANALYSIS: This act provides that buildings or structures associated with equine activities are "farm buildings" for purposes of compliance with building rules. Equine activities include the care, management, boarding, or training of horses, or instruction and training of riders. Any building or structure associated with equine activities, including those used to store equipment or food, are included. However, a farm building outside a municipality's building rules jurisdiction that is used for equine activities loses its exempt status if it is used for spectator events, and more than 10 people are present.

The Proposed Committee Substitute adds Section 2 to amend G.S. 42A-34 to provide that if a mandatory evacuation of an area is ordered by State or local authorities, the tenant of a vacation rental is entitled to a prorated refund from the landlord not just of rent, but also of taxes and any other payments made by the tenant pursuant to the vacation rental agreement.

The PCS also provides that any insurance offered by the landlord insuring the tenant against loss of use resulting from an evacuation may not exceed 8% of the total amount charged for the rental less the amount paid for a security deposit (currently may not exceed total rent).

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

*Karen Cochrane-Brown, Staff Attorney, substantially contributed to this summary.

H780-SMRG-69(CSRG-42) v1

HOUSE BILL 1159
Committee Substitute Favorable 4/20/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Insurance Licensing Changes.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAWS ON INSURANCE BUSINESS ENTITY LICENSES; TO PROVIDE FOR ELECTRONIC FILINGS WITH THE DEPARTMENT OF INSURANCE; AND TO CLARIFY THE LAW ON APPOINTMENT OF AGENTS BY INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-26(j) reads as rewritten:

"(j) A business entity that sells, solicits, or negotiates insurance shall be licensed in accordance with G.S. 58-33-31(b). Every member of the partnership and every officer, director, stockholder, and employee of the business entity personally engaged in this State in selling, soliciting, or negotiating policies of insurance shall qualify as an individual licensee. A business entity license shall expire on ~~April 1~~ March 31 of each year unless the business entity pays the renewal fee."

SECTION 2. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-250. Electronic filings.**

(a) As used in this section:

(1) "Commissioner's designee" includes the National Insurance Producer Registry of the NAIC.

(2) "License" includes any license, certificate, registration, or permit issued under this Chapter.

(3) "Licensee" means any person who holds a license.

(b) Notwithstanding any other provision of this Chapter, the Commissioner may adopt rules that require an applicant for a license or a licensee to file documents electronically with the Commissioner or the Commissioner's designee. The rules adopted under this section may contain procedures for the electronic payment of any fee required under this Chapter and the electronic filing of documents, including:

(1) Any document required as part of an application for a license under this Chapter.

(2) Any document required to be filed by an applicant for a license or a licensee to maintain the license in good standing.

(3) Any other document required or permitted to be filed.

(c) The Commissioner or the Commissioner's designee may charge an administrative fee for electronic filing. Fees charged for the processing of an electronic filing are in addition to any other fee imposed for the filing. Fees charged for an electronic filing are limited to the actual cost of the electronic transaction.

(d) This section does not supersede any other provision of law that requires the electronic filing of a document or requires an applicant for a license or a licensee to make any other filing electronically."

SECTION 3. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. Upon the appointment, the individual shall be authorized to act as an agent for the appointing insurer for ~~all~~ the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited. For purposes of determining the number of appointments for an agent, there shall be one appointment for each kind of insurance for which the appointed agent is licensed in this State, unless specifically limited."

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

HOUSE BILL 1159:
Insurance Licensing Changes.-AB

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 7, 2009
Introduced by:	Reps. Wray, Goforth	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Third Edition		

SUMMARY: HB 1159 is an agency bill that clarifies when business entity licenses expire, provides for electronic filings with the Department of Insurance via the National Insurance Producer Registry and authorizes a fee for the electronic filing, and specifies that there must be a separate appointment by an insurer for each kind of insurance for which an agent is licensed in this state.

The bill should be referred to Senate Finance.

BILL ANALYSIS:

Section 1 clarifies that business entity licenses expire on March 1st (instead of April 1st) of each year unless renewed.

Section 2 creates a new section, G.S. 58-2-250 which allows electronic filing of licensing documents either with the Commissioner of Insurance or the Commissioner's designee. The designee may include the National Insurance Producer Registry of the National Association of Insurance Commissioners ("National Registry"). The bill allows the National Registry to charge an administrative fee for processing the electronic filing that is in addition to any other fee imposed for the filing. The fee for an electronic filing is limited to the actual cost of the electronic transaction.

Section 3 amends G.S. 58-33-40(b) to clarify that when an insurer appoints a licensed individual to be its agent, the individual is authorized to act as an agent for each type of insurance for which the individual holds a license and which the insurer is authorized to sell. There is one appointment for each type of insurance for which the appointed agent is licensed.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

Martha Walston, counsel to House Finace, substantially contributed to this summary.

H1159-SMRC-40(e3) v2

HOUSE BILL 1161
Committee Substitute Favorable 4/20/09
Committee Substitute #2 Favorable 5/5/09

Short Title: Revise Insurance Financial Conditions.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAWS RELATED TO THE FINANCIAL CONDITIONS OF INSURANCE COMPANIES, INCLUDING REINSURANCE INTERMEDIARIES, RECEIVERSHIP, THIRD-PARTY ADMINISTRATORS AND AUDITS OF WORKERS' COMPENSATION SELF-INSURERS, AND FOREIGN INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-22. Compliance with orders.**

An intermediary shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of nonprivileged documents by the intermediary or the testimony of an employee or other individual otherwise under the control of the intermediary with respect to any reinsurance transaction for which it acted as an intermediary."

SECTION 2. G.S. 58-30-85(e) reads as rewritten:

"(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, runoff, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the opinion of the Court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the insurer, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary."

SECTION 3. G.S. 58-30-165(d) reads as rewritten:

"(d) The liquidator shall give notice of the order to show cause by publication ~~and~~ or by ~~first class~~certified mail to each member liable thereunder mailed to his last known address as it appears on the insurer's records, at least 20 days before the return day of the order to show cause."

SECTION 4. G.S. 58-47-205 reads as rewritten:

"**§ 58-47-205. Other requirements.**

(a) A TPA or service company, or any owner, officer, employee, or agent of a TPA or service company, or any other person affiliated with or related to the TPA or service company shall ~~not~~ not:

(1) ~~serve~~ Serve as a trustee of a self-insurer.

(2) Make a contribution to the surplus of a self-insurer.

...."

SECTION 5. G.S. 97-165 reads as rewritten:

"**§ 97-165. Definitions.**

As used in this Article:

...

(2) "Certified audit" means an audit on which a certified public accountant or a foreign registered public accounting firm expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United ~~States.~~States or prepared in accordance with International Financial Reporting Standards.

(3) "Certified public accountant" or "CPA" means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on ~~the GAAP financial statement and~~financial statements prepared in accordance with United States Generally Accepted Accounting Principles or International Financial Reporting Standards. The Commission may require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.

...

~~(6)~~ (5a) ~~"GAAP financial~~"Financial statement" means a financial statement as defined by accounting principles generally accepted in the United ~~States.~~States or a financial statement prepared in accordance with International Financial Reporting Standards.

(6) "Foreign registered public accounting firm" means a public accounting firm that is organized and operates under the laws of a non-United States jurisdiction, government, or political subdivision and is registered and in good standing with the Public Company Accounting Oversight Board and authorized by the Board to prepare or issue any audit report with respect to any issuer.

...."

SECTION 6. G.S. 97-170(d) reads as rewritten:

"(d) The license application shall be comprised of the following information:

...

(2) Certified audited ~~GAAP~~ financial statements prepared by a CPA or submitted by a foreign registered public accounting firm for the two most

recent years. The financial statement presentation shall facilitate application of ratio and trend analysis.

...."

SECTION 7. G.S. 97-180(a) reads as rewritten:

"(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited ~~GAAP~~ financial statement, prepared by a ~~CPA,~~CPA or submitted by a foreign registered public accounting firm, for that fiscal year. The financial statement presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor."

SECTION 8. G.S. 58-16-5 reads as rewritten:

"**§ 58-16-5. Conditions of licensure.**

A foreign or alien insurance company may be licensed to do business when it:

...

(2) Satisfies the Commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact as direct insurance or assumed ~~reinsurance, and that it has been successful in the conduct of the business;~~reinsurance; that it has, if a stock company, a free surplus and a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description of an amount not less than that required for the organization of a domestic company writing the same kinds of business; and if a mutual company that its free surplus is not less than that required for the organization of a domestic company writing the same kind of business, and that the capital, surplus, and other funds are invested substantially in accordance with the requirements of this Chapter.

...."

SECTION 9. This act becomes effective October 1, 2009.

HOUSE BILL 1161:
Revise Insurance Financial Conditions.-AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2009
Introduced by:	Reps. Wray, Goforth	**Prepared by:**	Kory Goldsmith
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1161 would make changes to laws applicable to reinsurance intermediaries, to insurance company rehabilitation and liquidation, to workers compensation self-insurers, and to foreign insurers doing business in North Carolina.***

BILL ANALYSIS:

Section 1 - Pursuant to G.S. 58-9-26, the Commissioner of Insurance can impose sanctions upon reinsurance intermediaries (brokers), including the suspension or revocation of their license. Currently, Article 9 does not specifically require intermediaries to comply with orders by courts or arbitration panels requiring production of documents or testimony of employees or other persons under their control concerning reinsurance transactions with which they were involved.

Section 1 of the bill would mandate compliance with orders issued by courts or arbitration panels. This change would subject offenders to sanctions by the Commissioner of Insurance in addition to whatever sanctions may be imposed by the issuing court or arbitration panel.

Section 2 - Article 30 of Chapter 58 governs the rehabilitation of the business of an insurance company. G.S. 58-30-85(e) provides that "[i]f the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes" and submit it to a court for approval.

Section 2 of the bill would authorize the rehabilitator to include "runoff" as one of the components of a plan of rehabilitation.

Section 3 - In a liquidation of an insurer, a court may levy an assessment against members who are liable for such assessments under the insurance company's bylaws for the amount by which the company's liabilities exceed its assets. G.S. 58-30-165(d) requires the liquidator to issue a notice to show cause why the liquidator should not pursue a judgment for the amount of the levy. Currently, this section requires the notice to be served upon the members at their last known addresses by publication and by first class mail.

Section 3 of the bill would permit the liquidator to serve the show cause order either by publication or by first class mail.

Section 4 - Employers who self-insure their workers compensation obligations by pooling their liabilities to form a self-insured group are subject to the requirements of Article 47 of Chapter 58 of the General Statutes.

- A "third party administrator" or "TPA" is a person engaged by the self-insured group to provide it with day-to-day management.
- A "service company" is an entity that has contracted with an employer or group for the purpose of providing any services related to claims adjustment, loss control, or both.

Currently, a TPA, service company, or any person related to or affiliated with either, is prohibited from serving as a trustee of a self-insurer. A self-insured group must maintain a minimum "surplus," or a minimum level of funds over and above liabilities and capital of the company.

Section 4 of the bill would prohibit a TPA, service company, or any person related to or affiliated with them from making any contribution to the surplus of the self-insurer.

Sections 5, 6, and 7 - Under Article 5 of Chapter 97, employers who are self-insured must be licensed by the Commissioner of Insurance and must submit financial statements to establish that they meet the statutory requirements. Current law requires that the financial statements be prepared by CPAs in accordance with accounting principles generally accepted in the United States ("GAAP").

Sections 5, 6, and 7 of the bill would recognize alternative methods of reporting under International Financial Reporting Standards (in addition to GAAP) and would permit the required reports to be prepared by foreign public accounting firms registered with the Public Company Accounting Oversight Board established by the Sarbanes-Oxley Act of 2002.

Section 8 - G.S. 58-16-5 currently requires a foreign insurance company wishing to do business in North Carolina to satisfy the Commissioner of Insurance not only that it is legally organized under the laws of its state or government to do the business it proposes to transact in North Carolina, but also "that it has been successful in the conduct of the business." Under applicable DOI regulations, this generally requires that the applicant "have net income for three consecutive years immediately preceding the date of application for admission." 11 NCAC 14.0504.

Section 8 of the bill would eliminate the requirement that the foreign insurance company show that it has been successful in the conduct of the business.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1161-SMRC-44(e3) v2

Brad Krehely, Counsel to House Judiciary II, substantially contributed to this summary.

HOUSE BILL 1164

Short Title:	Modernize HMO Oversight Requirements.	(Public)
Sponsors:	Representatives Goforth, Wray (Primary Sponsors); and Lucas.	
Referred to:	Health, if favorable, Insurance.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT REQUESTED BY THE COMMISSIONER OF INSURANCE TO ELIMINATE OBSOLETE DATA COLLECTION REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-67-50(e) reads as rewritten:

"**§ 58-67-50. Evidence of coverage and premiums for health care services.**

(e) ~~Effective January 1, 1989, every~~Every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. ~~In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the Healthcare Effectiveness Data and Information Set guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the Healthcare Effectiveness and Information Set format.~~"

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

HOUSE BILL 1164:
Modernize HMO Oversight Requirements

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1164 is an agency bill that deletes outdated language and removes the requirement that every HMO collect and report data for group contracts of 1,000 or more members according to Healthcare Effectiveness Data and Information Set (HEDIS) guidelines to the Commissioner annually and make the reports available to all employer groups.***

CURRENT LAW: Subsection (e) of G.S. 58-67-50 "Evidence of coverage and premiums for health care services" directs Health Maintenance Organizations (HMOs) to provide cost and utilization information for group contracts of 100 or more on an annual basis when requested by the group.

This subsection also directs HMOs, for group contracts of 1,000 or more, to provide cost, use of service, prevention, outcomes and other data collected according to HEDIS guidelines, and to file annual reports of health benefit plan-wide cost, service and other performance experiences with the Commissioner of Insurance and make the reports available to all employer groups.

BILL ANALYSIS: House Bill 1164 would delete the latter portion of G.S. 58-67-50(e) to remove the reporting language applying to HMOs with group contracts of 1,000 or more members.

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

BACKGROUND: Since the time of its enactment, additional methods for monitoring the performance of HMOs have been developed and the provisions of G.S. 58-67-50(e) regarding HMOs reporting HEDIS data set information for group contracts of 1,000 or more members have been supplanted by other monitoring tools.

H1164-SMRC-41(e1) v1

Ben Popkin, counsel to House Insurance, substantially contributed to this summary.

HOUSE BILL 1165
Committee Substitute Favorable 5/4/09

Short Title: Update Standard Fire Insurance Policy.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE PROVISIONS SET FORTH IN THE PHOTOGRAPHIC VERSION OF THE STANDARD FIRE INSURANCE POLICY; MAKE CONFORMING AMENDMENTS; AND REPEAL THE STATUTE THAT CONTAINS THE PHOTOGRAPHIC VERSION OF THE STANDARD FIRE INSURANCE POLICY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-44-16. Fire insurance policies; standard fire insurance policy provisions.**

(a) The provisions of a fire insurance policy, as set forth in subsection (f) of this section, shall be known and designated as the "standard fire insurance policy."

(b) With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no fire insurance policy shall be made, issued, or delivered by any insurer or by any agent or representative of the insurer on any property in this State, unless it conforms in substance with all of the provisions, stipulations, agreements, and conditions in subsection (f) of this section.

(c) There shall be printed at the head of the policy the name of the insurer or insurers issuing the policy; the location of the home office of the insurer or insurers; a statement whether the insurer or insurers are stock or mutual corporations or are reciprocal insurers. This section does not limit an insurer to the use of any particular size or manner of folding the paper upon which the policy is printed; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and add a statement of the plan under which it operates in this State.

(d) The standard fire insurance policy need not be used for effecting reinsurance between insurers.

(e) The provisions of the standard fire policy are stated in this section and shall be incorporated in fire insurance policies subject to this section. If any conditions of this section are construed to be more liberal than any other policy conditions relating to the perils of fire, lightning, or removal, the provisions of this section shall apply.

(f) The following subdivisions comprise all of the provisions, stipulations, agreements, and conditions of the standard fire insurance policy:

(1) General provisions. – In consideration of the provisions, stipulations, agreements, and conditions in this policy or added to this policy, and of the premium specified in the declarations or in endorsements made a part of this policy, this insurer, for the term of years specified in the declarations from inception date shown in the declarations at 12:01 A.M. to expiration date shown in the declarations at 12:01 A.M. at the location of the property

covered, to an amount not exceeding the limit of liability specified in the declarations, does insure the insured named in the declarations and legal representatives to the extent of the actual cash value of the property at the time of loss but not exceeding the amount that it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured against all direct loss by fire, lightning, and other perils insured against in this policy, including removal from premises endangered by the perils insured against in this policy, except as hereinafter provided, to the property described in the declarations while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy but not elsewhere. Assignment of this policy shall not be valid except with the written consent of this insurer. This policy is made and accepted subject to the provisions, stipulations, agreements, and conditions in this section, which are hereby made a part of this policy, together with such other provisions, stipulations, agreements, and conditions that may be added to this policy as provided in this policy.

(2) Concealment or fraud. – This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of this insurance, or the interest of the insured in the subject of this insurance, or in the case of any fraud or false swearing by the insured relating the subject of this insurance.

(3) Uninsurable and excepted property. – This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, or securities; nor, unless specifically named in this policy in writing, bullion or manuscripts.

(4) Perils not included. – This insurer shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by enemy attack by armed forces, including action taken by military, naval, or air forces in resisting an actual or an immediately impending enemy attack; invasion; insurrection; rebellion; revolution; civil war; usurped power; order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; or for loss by theft.

(5) Other insurance. – Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached to this policy.

(6) Conditions suspending or restricting insurance. – Unless otherwise provided in writing added to this policy, this insurer shall not be liable for loss occurring:

a. While the hazard is increased by any means within the control or knowledge of the insured;

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or

c. As a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

(7) Other perils or subjects. – Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing on this policy or added to this policy.

(8) Added provisions. – The extent of the application of insurance under this policy and of the contribution to be made by this insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added to this policy; provided, however, no provision may be waived except such as by the terms of this policy is subject to change.

(9) Waiver provisions. – No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted in this policy or expressed in writing added to this policy. No provision, stipulation, or forfeiture shall be held to be waived by any requirement or proceeding on the part of this insurer relating to appraisal or to any examination provided for in this policy.

(10) Cancellation of policy. – This policy shall be cancelled at any time at the request of the insured, in which case this insurer shall, upon demand and surrender of this policy, refund the excess of paid premium above any short rates for the expired time. This policy may be cancelled at any time by this insurer by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

(11) Mortgagee interests and obligations. – If loss is made payable, in whole or in part, to a designated mortgagee not named in this policy as the insured, such interest in this policy may be cancelled by giving to such a mortgagee a ten days' written notice of cancellation. If the insured fails to render proof of loss, the mortgagee, upon notice, shall render proof of loss as specified in this policy within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit. If this insurer claims that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing the mortgagee's right to sue; or this insurer may pay off the mortgage debt and require an assignment of that debt and of the mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added to this policy by agreement in writing.

(12) Pro rata liability. – This insurer shall not be liable for a greater proportion of any loss than the amount insured by this policy bears to all insurance covering the property against the peril involved, whether collectible or not.

(13) Requirements in case loss occurs. – The insured shall give immediate written notice to this insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, and furnish a complete inventory of the destroyed, damaged, and undamaged property, showing in detail quantities, costs,

actual cash value, and amount of loss claimed. Within 60 days after the loss, unless that time is extended in writing by this insurer, the insured shall render to this insurer a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item of the property and the amount of loss to the property, all encumbrances on the property, all other contracts of insurance, whether valid or not, covering any of the property, any changes in the title, use, occupation, location, possession, or exposures of the property since the issuing of this policy, by whom and for what purpose any building described in this policy and the several parts of the building were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this insurer all that remains of any property described in this policy, and submit to examinations under oath by any person named by this insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies of them if originals are lost, at such reasonable time and place as may be designated by this insurer or its representative, and shall permit extracts and copies of them to be made.

(14) Appraisal. – If the insured and this insurer fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon a competent and disinterested umpire, on the request of the insured or this insurer, a competent and disinterested umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit only their differences to the umpire. An award in writing, so itemized, of any two when filed with this insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

(15) Company's options. – It shall be optional with this insurer to take all, or any part, of the property at the agreed or appraised value and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss required in this policy.

(16) Abandonment. – There can be no abandonment to this insurer of any property.

(17) When loss payable. – The amount of loss for which this insurer may be liable shall be payable 60 days after proof of loss, as provided in this policy, is received by this insurer and ascertainment of the loss is made either by written agreement between the insured and this insurer or by the filing with this insurer of an award as provided in this policy.

(18) Suit. – No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this policy have

been complied with and unless commenced within three years after inception of the loss.

(19) Subrogation. – This insurer may require from the insured an assignment of all rights of recovery against a party for loss to the extent that payment therefor is made by this insurer."

SECTION 2. G.S. 58-44-30 reads as rewritten:

"**§ 58-44-30. Notice by insured or agent as to increase of hazard, unoccupancy and other insurance.**

If notice in writing signed by the insured, or his agent, is given before loss or damage by any peril insured against under the standard fire insurance policy to the agent of the company of any fact or condition stated in ~~paragraphs (a), (b) or with respect to "other insurance" of the standard form of policy set out in G.S. 58-44-15~~G.S. 58-44-16, it is equivalent to an agreement in writing added ~~thereto,~~to the policy and has the force of the agreement in writing referred to in the ~~foregoing form of~~standard fire insurance policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as ~~therein stipulated.~~stipulated in the policy."

SECTION 3. G.S. 58-44-25 reads as rewritten:

"**§ 58-44-25. Optional provisions as to loss or damage from nuclear reaction, nuclear radiation or radioactive contamination.**

Insurers issuing the standard fire insurance policy pursuant to ~~G.S. 58-44-15,~~G.S. 58-44-16, or any permissible variation ~~thereof,~~of that policy, and policies issued pursuant to G.S. 58-44-20 and Article 36 of this Chapter, are ~~hereby~~ authorized to affix ~~thereto~~ to the policy or include ~~therein~~ in the policy a written statement that the policy does not cover loss or damage caused by ~~nuclear reaction or nuclear radiation or radioactive contamination,~~nuclear reaction, nuclear radiation, or radioactive contamination, all whether directly or indirectly resulting from an insured peril under ~~said~~the policy; provided, however, that nothing ~~herein contained~~in this section shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by ~~nuclear reaction or nuclear radiation or radioactive contamination.~~nuclear reaction, nuclear radiation, or radioactive contamination."

SECTION 4. G.S. 58-44-20 reads as rewritten:

"**§ 58-44-20. Standard policy; permissible variations.**

With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no~~No~~ fire insurance company shall issue fire insurance policies~~, except policies of automobile fire, theft, comprehensive and collision, marine and inland marine insurance,~~ on property in this State other than those ~~of the substance of the standard form as~~containing the provisions set forth in ~~G.S. 58-44-15~~G.S. 58-44-16 except as follows:

...."

SECTION 5. G.S. 1-52(12) reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action –

...

(12) Upon a claim for loss covered by an insurance policy ~~which~~ that is subject to the three-year limitation contained in ~~lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).~~G.S. 58-44-16."

SECTION 6. G.S. 58-44-15 is repealed.

SECTION 7. This act becomes effective January 1, 2010, and applies to fire insurance policies issued or renewed on and after that date.

HOUSE BILL 1165:
Update Standard Fire Insurance Policy.-AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Second Edition		

BILL SUMMARY: Section 1 of House Bill 1165 would add a new section to Article 44 (Property Insurance Policies) of Chapter 58 (Insurance) – G.S. 58-44-16 *Fire insurance policies; standard fire insurance policy provisions*, to codify the provisions of the standard fire insurance policy as set forth by photographic image in the current G.S. 58-44-15.

Sections 2 through 5 would make technical and conforming changes.

Section 6 would repeal the existing G.S. 58-44-15 containing the photographic image of the policy.

EFFECTIVE DATE: House Bill 1165 becomes effective January 1, 2010 and applies to fire policies issued or renewed on or after that date.

Tim Hovis, counsel to House Insurance, and Ben Popkin, counsel to House Judiciary III, substantially contributed to this summary.

H1165-SMRC-45(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1183
Committee Substitute Favorable 4/22/09
Third Edition Engrossed 4/27/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1183-CSRC-35 [v.1]

6/10/2009 12:58:50 PM

Short Title: Health and Other Insurance Law Changes.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING HEALTH INSURANCE AND MANAGED CARE; TO CHANGE CERTAIN HEALTH INSURANCE LAWS TO COMPORT WITH RECENT CONGRESSIONAL ENACTMENTS; TO MAKE A TECHNICAL CORRECTION IN A CREDIT INSURANCE LAW; TO CONFORM MOTOR VEHICLE INSPECTION COMPLIANCE REQUIREMENT WITH DISCONTINUATION OF STICKERS; AND TO REPEAL THE EXPIRATION DATE OF THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-51-17(a)(1)a. and b. read as rewritten:

"**§ 58-51-17. Portability for accident and health insurance.**

(a) Rules Relating to Crediting Previous Coverage.

(1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A ~~self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.~~group health plan as defined in G.S. 58-68-25(a)(4b.).

b. ~~Group or individual health insurance coverage.~~Health insurance coverage without regard to whether the coverage is offered in the group market, the individual market, or otherwise."

SECTION 2. G.S. 58-68-25(a) is amended by adding the following new subdivisions to read:

"**§ 58-68-25. Definitions; excepted benefits; employer size rule.**

(a) Definitions. – In addition to other definitions throughout this Article, the following definitions and their cognates apply in this Article:

...

(4a) 'Group health insurance coverage'. – Health insurance coverage offered in connection with a group health plan.

(4b) 'Group health plan'. – The meaning given the term under 45 C.F.R. § 146.145(a).

(4c) 'Group market'. – The market for health insurance coverage offered in connection with a group health plan.

...."

SECTION 3. G.S. 58-68-25(a)(5) reads as rewritten:

"(5) "Health insurance coverage" or "coverage" or "health insurance plan" or "plan". – Benefits consisting of medical care, provided directly through insurance or otherwise and including items and services paid for as medical care, under any accident and health insurance policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, written by a health insurer. Health insurance coverage includes group health insurance coverage and individual health insurance coverage."

SECTION 4. G.S. 58-68-30(c)(1) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

a. A ~~self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.~~group health plan.

b. ~~Group or individual health insurance coverage.~~ Health insurance coverage without regard to whether the coverage is offered in the group market, the individual market, or otherwise.

c. Part A or part B of title XVIII of the Social Security Act.

d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

e. Chapter 55 of title 10, United States Code.

f. A medical care program of the Indian Health Service or of a tribal organization.

g. A State health benefits risk pool.

h. A health plan offered under chapter 89 of title 5, United States Code.

i. A public health plan (as defined in federal regulations).

j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this ~~section and G.S. 58-51-15(a)(2)b.~~ section."

SECTION 5. G.S. 58-68-60(b)(1) reads as rewritten:

"(b) Eligible Individual Defined. – In this Part, "eligible individual" means an individual:

(1) (i) For whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and (ii) whose most recent prior creditable coverage was under ~~an ERISA~~ a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan);

...."

SECTION 6. G.S. 58-65-2 is amended by adding two new statutory references to read:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

...

G.S. 58-51-15(a)(2)b. Accident and health policy provisions.

G.S. 58-51-17 Portability for accident and health insurance."

SECTION 7. G.S. 58-67-171 is amended by adding two new statutory references to read:

"**§ 58-67-171. Other laws applicable to HMOs.**

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

...

G.S. 58-51-15(a)(2)b. Accident and health policy provisions.

G.S. 58-51-17 Portability for accident and health insurance."

SECTION 8. G.S. 58-51-15 is amended by adding the following new subsection to read:

"(i) Applicability. – This section applies to all accident and health insurance policies delivered or issued for delivery in this State, including certificates issued under group policies that are delivered or issued for delivery in this State. This section also applies to certificates issued under a policy issued and delivered to a trust or association outside this State and covering persons residing in this State."

SECTION 9. G.S. 58-51-17 is amended by adding the following new subsection to read:

"(d) Applicability. – This section applies to all health benefit plans of individual health insurance coverage delivered or issued for delivery in this State, including certificates issued under group policies that are delivered or issued for delivery in this State. This section also applies to certificates issued under a policy issued and delivered to a trust or association outside this State and covering persons residing in this State."

SECTION 10. G.S. 58-51-17(b) reads as rewritten:

"**§ 58-51-17. Portability for accident and health insurance.**

...

(b) Exceptions.

(1) Exclusion not applicable to certain newborns. – Subject to subdivision (3) of this subsection, an individual health insurer shall not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the individual's date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children. – Subject to subdivision (3) of this subsection, ~~a group~~ an individual health insurer shall not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.

(3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage."

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"**§ 58-54-45. By reason of disability.**

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement ~~Plans A, C, and J~~ Plan A available to persons eligible for Medicare by reason of disability before age ~~65.~~

65 and also standardized Plan C or F if marketing either Plan to persons eligible for Medicare due to age. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 12. G.S. 58-56-26(c) reads as rewritten:

"(c) In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an on-site audit of the operations of the TPA. On July 1, 2010, and annually thereafter, every insurer shall file with the Commissioner a certification of completion of the audits as required by this subsection and performed during the previous calendar year, in the format, content, and manner as specified by the Commissioner. The insurer shall maintain in its corporate records documentation of the audits conducted to support its certification of audits for a period of five years or, if a domestic insurer, until the completion of the next quinquennial examination."

SECTION 13. G.S. 58-56-26 is amended by adding the following new subsection to read:

"**§ 58-56-26. Responsibilities of the insurer.**

...

(d) The Commissioner may adopt rules necessary to implement, administer, and enforce the provisions of this section."

SECTION 14. G.S. 58-58-146 reads as rewritten:

"**§ 58-58-146. Application for annuities required.**

(a) Each individual (non-group) annuity contract shall be issued only upon application of the ~~applicant.~~ annuitant or proposed owner. Any application ~~or enrollment form~~ form, whether paper or electronic, is subject to G.S. 58-3-150, and if taken by an agent, broker, or other producer shall include the certificate of the ~~agent~~ agent, broker, or other producer that the ~~agent~~ agent, broker, or other producer has truly and accurately recorded on the application ~~or enrollment~~ form the information provided by the ~~applicant.~~ annuitant or proposed owner. Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

(b) The application copy required by this section may be either a photo copy of the original completed application, or a paper print of the completed application form, or a document that represents a compilation of information from the application process. Nothing in this subsection prohibits use of electronic application forms provided the format complies with these requirements"

SECTION 15. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-63-75. Senior-specific certifications and professional designations; rules.**

The Commissioner may adopt rules to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product. These rules shall be substantially similar to the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

SECTION 16. G.S. 58-3-225(h) reads as rewritten:

"(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than 30 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery. The recovery of overpayments or offsetting of future payments ~~may be made not more than~~ shall be made within the two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor. The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. ~~The period for which such recoveries may be made may not exceed~~ The recovery of underpayments or nonpayments shall be made within the two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

SECTION 17. G.S. 58-51-25 reads as rewritten:

"**§ 58-51-25. Policy coverage to continue as to mentally retarded or physically handicapped ~~children.~~children; coverage of dependent students on medically necessary leave of absence.**

(a) An individual or group accident and health insurance policy, hospital service plan policy, or medical service plan ~~policy, delivered or issued for delivery in this State after July 1, 1969, which~~ policy that provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of such limiting age shall not operate or terminate the coverage of such child while the child is and continues to be (i) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and (ii) chiefly dependent upon the policyholder or subscriber for support and maintenance: Provided, proof of such incapacity and dependency is furnished to the insurer, hospital service plan corporation, or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the child's attainment of the limiting age.

(b) All health benefit plans, as defined in G.S. 58-3-167, that provide that coverage of a dependent child shall terminate upon a change in enrollment of the child in a postsecondary educational institution shall provide for the continued eligibility of the dependent child during a medically necessary leave of absence from the postsecondary educational institution in accordance with all applicable requirements of Public Law 110-381, known as Michelle's Law."

SECTION 18. G.S. 58-3-215 is amended by adding the following new subsection to read:

"(d) Notwithstanding any other provision of this section, a health benefit plan, as defined in G.S. 58-3-167, and insurers, as defined in G.S. 58-3-167, shall comply with all applicable standards of Public Law 110-233, known as the Genetic Information Nondiscrimination Act of 2008, as amended by Public Law 110-343, and as further amended."

SECTION 19. G.S. 58-3-220 is amended by adding the following new subsections to read:

"(i) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and mental health benefits shall, with respect to the mental health benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(j) Subsection (i) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 20. G.S. 58-51-50 is amended by adding the following new subsections to read:

"(f) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(g) Subsection (f) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 21. G.S. 58-65-75 is amended by adding the following new subsections to read:

"(f) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(g) Subsection (f) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 22. G.S. 58-67-70 is amended by adding the following new subsections to read:

"(g) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(h) Subsection (g) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 23. G.S. 58-68-30(f) is amended by adding a new subdivision to read:

"(4) Special rules for application in case of Medicaid or State Children's Health Insurance Program (Title XXI of the Social Security Act). – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

a. Termination of Medicaid or State Children's Health Insurance Program. – The employee or dependent is covered under a Medicaid plan under Title XIX of the Social Security Act or under a State children's health plan under Title XXI of the Social Security Act and coverage of the employee or dependent under such a plan is terminated as a result of the loss of eligibility for such coverage and the employee requests coverage under the group health insurance coverage not later than 60 days after the termination of such coverage.

b. Eligibility for employment assistance under Medicaid or State Children's Health Insurance Program. – The employee or dependent becomes eligible for assistance, with respect to coverage under the group health insurance coverage, under such Medicaid plan or State child health plan (including any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health insurance coverage not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance."

SECTION 24. G.S. 58-50-75(b) reads as rewritten:

"(b) This Part applies to all insurers that offer a health benefit plan and that provide or perform utilization review pursuant to G.S. 58-50-61, the State Health Plan for Teachers and State Employees, any optional plans or programs operating under Part 2 of ~~Article 3~~ Article 3A of Chapter 135 of the General Statutes, the North Carolina Health Insurance Risk Pool, and the Health Insurance Program for Children. With respect to second-level grievance review decisions, this Part applies only to second-level grievance review decisions involving no certification decisions."

SECTION 25. G.S. 58-50-79(b) reads as rewritten:

"(b) A covered person shall be considered to have exhausted the insurer's internal grievance process for purposes of this section, if the covered person:

(1) Has filed a second-level grievance involving a no certification appeal decision under G.S. 58-50-61 and G.S. 58-50-62, and

(2) Except to the extent the covered person requested or agreed to a delay, has not received a written decision on the grievance from the insurer within 60 days since the date the covered person ~~filed the grievance with the insurer.~~can demonstrate that a grievance was filed with the insurer."

SECTION 26. G.S. 58-50-80(a) reads as rewritten:

"(a) Within ~~60~~ 120 days after the date of receipt of a notice under G.S. 58-50-77, a covered person may file a request for an external review with the Commissioner."

SECTION 27. G.S. 58-50-80(c) reads as rewritten:

"(c) If the finding of the preliminary review under subdivision (b)(2) of this section is that the request is not complete, the Commissioner shall request from the covered person the information or materials needed to make the request complete. The covered person shall furnish the Commissioner with the requested information or materials within ~~90~~ 150 days after the date of the insurer's decision for which external review is requested."

SECTION 28. The introductory paragraph of G.S. 58-50-82(a) reads as rewritten:

"(a) Except as provided in subsection (g) of this section, a covered person may ~~make a written or oral~~ file a request for an expedited external review with the Commissioner at the time the covered person receives:".

SECTION 29. G.S. 58-50-82(b)(1) reads as rewritten:

"(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:

(1) Notify the insurer that made the no certification, no certification appeal decision, or second-level grievance review decision which is the subject of the request that the request has been received and provide a copy of the ~~request or verbally convey all of the information included in the~~ request. The Commissioner shall also request any information from the insurer necessary to make the preliminary review set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the information not later than one business day after the request was made.

...."

SECTION 30. G.S. 58-50-82(f) reads as rewritten:

"(f) If the notice provided under subsection (e) of this section was not in writing, within two days after the date of providing that notice, the assigned organization shall provide written confirmation of the decision to the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner and include the information set forth in ~~G.S. 58-50-80(m).~~ G.S. 58-50-80(k).

Upon receipt of the notice of a decision under subsection (e) of this section that reverses the no certification, no certification appeal decision, or second-level grievance review decision, the insurer shall within one day reverse the no certification, noncertification appeal decision, or second-level grievance review decision that was the subject of the review and shall provide coverage or payment for the requested health care service or supply that was the subject of the noncertification, noncertification appeal decision, or second-level grievance review decision."

SECTION 31. G.S. 58-50-85(c) reads as rewritten:

"(c) ~~The Commissioner may determine that accreditation by a nationally recognized private accrediting entity with established and maintained standards for independent review organizations that meet the minimum qualifications established under G.S. 58-50-87 will cause an independent review organization to be deemed to have met, in whole or in part, the requirements of this section and G.S. 58-50-87. A decision by the Commissioner to recognize an accreditation program for the purpose of granting deemed status may be made only after reviewing the accreditation standards and program information submitted by the accrediting body. An independent review organization seeking deemed status due to its accreditation shall submit original documentation issued by the accrediting body to demonstrate its accreditation.~~In order to be eligible for approval by the Commissioner, an independent review organization shall be accredited by a nationally recognized private accrediting entity that the Commissioner has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications established under G.S. 58-50-87. The Commissioner may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation."

SECTION 32. G.S. 58-50-90(b) reads as rewritten:

"(b) Each organization required to maintain written records on all requests for external review under subsection (a) of this section for which it was assigned to conduct an external review shall submit to the Commissioner, ~~at least annually,~~ upon the Commissioner's request, a report in the format specified by the Commissioner."

SECTION 33. G.S. 58-50-94(b) reads as rewritten:

"(b) After the public opening, the Commissioner shall review the proposals, examining the ~~costs and~~ quality of the services offered by the independent review organizations, the reputation and capabilities of the independent review organizations submitting the proposals, and the provisions in G.S. 58-50-85 and G.S. 58-50-87. The Commissioner shall determine which proposal or proposals would satisfy the provisions of this Part. The Commissioner shall make his determination in consultation with an evaluation committee whose membership includes representatives of insurers subject to Part 4 of Article 50 of Chapter 58 of the General Statutes, health care providers, and insureds. In selecting the review organizations, in addition to considering cost, quality, and adherence to the requirements of the request for proposals, the Commissioner shall consider the desirability and feasibility of contracting with multiple review organizations and shall ensure that, for any given type of case involving highly specialized services and treatments, at least one review organization is available and capable of reviewing the case."

SECTION 34. G.S. 58-57-100(a) reads as rewritten:

"(a) Single interest or dual interest physical damage insurance may be written on nonfleet private passenger motor vehicles, as defined in G.S. 58-40-10, that are used as

collateral for loans made under Article 15 of Chapter 53 of the General Statutes. Automobile physical damage insurance as described in this section is a form of credit property insurance, as referred to in G.S. 53-189. It is subject to the following conditions:

(1) Such insurance may be written only on a motor vehicle ~~on which there is a valid inspection sticker.~~that is in compliance with the inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes.

(2) If a motor vehicle is already insured and the lender is named loss payee and that insurance continues in force, then no other physical damage insurance may be written.

(3) Notification must be given orally and in writing to the borrower that he has the option to provide his own insurance coverage at any point during the term of the loan.

(4) The creditor must have either a first or second lien on the motor vehicle to be insured.

(5) The amount of insurance coverage may not exceed the lesser of (i) the principal amount of the loan plus allowable charges, excluding interest, plus two scheduled installment payments or (ii) the actual fair market value of the collateral at the time the insurance is written.

(6) When a creditor accepts other collateral in addition to a motor vehicle as herein defined, the combined insurance on all collateral may not exceed the initial indebtedness of the loan."

SECTION 35. Section 3 of S.L. 2005-183 reads as rewritten:

"**SECTION 3.** This act becomes effective October 1, ~~2005, and expires October 1, 2009.~~2005."

SECTION 36. G.S. 58-60-170(h) reads as rewritten:

"(h) Compliance with the ~~National Association of Securities Dealers~~ Financial Industry Regulatory Authority Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of ~~variable annuities.~~ annuities subject to the Conduct Rules. ~~However, nothing~~ Nothing in this subsection limits the Commissioner's ability to enforce the provisions of this ~~Part.~~Article."

SECTION 37. Sections 34, 35, and 36 of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2009.

HOUSE BILL 1183:
Health and Other Insurance Law Changes.-AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 10, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to Third Edition H1183-CSRC-35		Committee Counsel

SUMMARY: House Bill 1183 would amend the following Articles of Chapter 58 - Insurance:

- Article 3 – General Regulations for Insurance.
- Article 50 – General Accident and Health Insurance Regulations.
- Article 51 - Nature of Policies.
- Article 54 – Medicare Supplement Insurance Minimum Standards.
- Article 56 – Third Party Administrators.
- Article 57 – Regulation of Credit Insurance.
- Article 58 – Life Insurance and Viatical Settlements.
- Article 63 – Unfair Trade Practices.
- Article 65 – Hospital, Medical, and Dental Service Corporations.
- Article 67 – Health Maintenance Organization Act.
- Article 68 – Health Insurance Portability and Accountability.
- Article 91 - Interstate Insurance Product Regulation Compact Act

BILL ANALYSIS:

Section 1 – would amend the definition of 'creditable coverage' in G.S. 58-57-17 "Portability for accident and health insurance", to ensure that State law provides for portability of coverage between group and individual market.

Sections 2 & 3 – would amend Article 68 " Health Insurance Portability and Accountability" of Chapter 58 to insert definitions relating to group coverage and clarify that both individual and group health insurance coverage are considered to be health insurance coverage.

Section 4 – would amend the definition section of Article 68 regarding creditable service to ensure that health insurance coverage includes both group and individual coverage and would remove reference to G.S. 58-51-15(a)(2)b (required policy provision relating to calculation of preexisting condition waiting period).

Section 5 – would delete incorrect reference to ERISA.

Sections 6 & 7 – would amend Articles 65 (Hospital, Medical, and Dental Service Corporations) and 67 (Health Maintenance Organization Act) to clarify applicability of preexisting condition calculation provision (G.S. 58-51-15(a)(2)b.) and portability provision (G.S. 58-51-17) to entities operating under the provisions of those articles.

Sections 8 & 9 – would amend accident and health policy provision (G.S. 58-51-15) and portability provision (G.S. 58-51-17) to apply these provisions to all accident and health insurance policies issued or delivered in the State and to certificates issued under policies issued and delivered to trusts or associations outside of the State that cover persons residing in the State.

Section 10 – would correct erroneous statutory provision in portability provision to identify individual not group health insurer.

Section 11 – would update reference to currently available standardized Medicare supplemental (Medigap) plans available.

Section 12 & 13 – would require that insurers who engage third party administrators (TPAs) of benefit plans with more than 100 certificate holders file audits with the Commissioner, in the manner specified by the Commissioner, on an annual basis, and that insurers maintain records of the audits for five years or, if a domestic insurer, until completion of its next quinquennial examination. Section 13 authorizes the Commissioner to adopt rules to implement this section.

Section 14 – would allow applications for annuities to be delivered electronically, unless paper copies are requested, and would receipts be provided for executed applications.

Section 15– would add a new section to Article 63 (Unfair Trade Practices) to authorize the Commissioner to adopt rules to protect consumers from misleading and fraudulent practices regarding senior-specific certifications and professional designations for a life insurance or annuity product.

Section 16 – would amend existing provision to clarify that time period within which over and underpayments of claims must be resolved is two years from date of original claim payment or adjudication.

Section 17 – would allow for continuation of health benefit plan coverage of dependent students on medically necessary leaves of absence from postsecondary educational institutions (Michelle's Law).

Section 18 – would require that health benefit plans and insurers comply with the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-343).

Sections 19, 20, 21 & 22 – would require that group health benefit plans of large employees (at least 51 employees) covering medical and surgical benefits and mental health benefits must comply with the Mental Health Parity and Addiction Equity Act of 2008 (Subtitle B of Title V of P. L. 110-343).

Section 23 – would allow for enrollment of eligible employees and their dependents into Medicaid or the State Children's Health Insurance Program (SCHIP) if they request enrollment within 60 days of termination of coverage or determination of eligibility.

Section 24 – would make external review of health benefit plan provisions applicable to the North Carolina Health Insurance Risk Pool.

Sections 25, 26, 27, 28, 29, 30, 31, 32 & 33 – would amend provisions of Part 4 (Health Benefit Plan External Review) of Article 50 of Chapter 58 to incorporate provisions of the NAIC Model Act (#76), modifying filing provisions and extending filing timelines relating to the grievance process.

Section 34 – would amend G.S. 58-57-100(a)(1) to reflect discontinuation of use of inspection stickers.

Section 35 – would repeal the sunset of Article 91 (Interstate Insurance Product Regulation Compact).

Section 36 – adds a new subsection to G.S. 58-60-170 to update the suitability law to comply with a recent Securities and Exchange Commission rule.

EFFECTIVE DATE: Sections 34, 35 and 37 of the act would become effective when it becomes law. The reminder becomes effective October 1, 2009.

Ben Popkin, counsel to House Insurance, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1313
Committee Substitute Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1313-CSRCf-34 [v.3]

6/10/2009 4:09:44 PM

Short Title: Regulate Public Adjusters.-AB (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR MEANINGFUL REGULATION OF INSURANCE PUBLIC ADJUSTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 33A.
"Public Adjusters.

"**§ 58-33A-1. Purpose and scope.**

This Article governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first-party claims.

"**§ 58-33A-5. Definitions.**

(1) Business entity. – A corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) Catastrophic incident. – As defined in the National Response Framework, any natural or man-made incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic incident shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred. If state and local resources are insufficient, the Governor may ask the President of the United States to make such a declaration.

(3) Fingerprints. – An impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

(4) Home state. – The District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare

another state in which it becomes licensed and acts as a public adjuster to be the home state.

(5) Individual. – A natural person.

(6) Person. – An individual or a business entity.

(7) Public adjuster. – Any person who, for compensation or any other thing of value on behalf of the insured, does any of the following:

a. Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract.

b. Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property.

c. Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.

(8) Uniform individual application. – The current version of the NAIC Uniform Individual Application for resident and nonresident individuals.

(9) Uniform business entity application. – The current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

"**§ 58-33A-10. License required.**

(a) A person shall not act or hold himself or herself out as a public adjuster in this State unless the person is licensed as a public adjuster in accordance with this Article.

(b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

(c) A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the Commissioner shall find all of the following:

(1) The business entity has paid the fees set forth in G.S. 58-33-125.

(2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws and regulations of this State.

(d) Notwithstanding subsections (a) through (c) of this section, a license as a public adjuster shall not be required of any of the following:

(1) An attorney-at-law admitted to practice in this State, when acting in his or her professional capacity as an attorney.

(2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract.

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including

photographers, estimators, private investigators, engineers, and handwriting experts.

(4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient.

(5) A person who settles subrogation claims between insurers.

"**§ 58-33A-15. Application for license.**

(a) A person applying for a public adjuster license shall apply to the Commissioner on the appropriate uniform application or other application prescribed by the Commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

(c) An applicant for a license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(d) In addition, if an applicant described in subsection (b) of this section is a business entity, each key person must furnish the Commissioner a complete set of the key person's fingerprints and a recent passport size full-face photograph of the applicant. The key person's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every key person shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Each key person shall pay the cost of the State and any national criminal history record check of the key person. As used in this subsection, 'key person' means a proposed officer, director, or any other individual who will be in a position to influence the operating decisions of the business entity. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(e) The Commissioner shall keep all information received pursuant to subsections (c) and (d) of this section privileged, in accordance with applicable State and federal law, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"**§ 58-33A-20. Resident license.**

(a) Before issuing a public adjuster license to an applicant under this section, the Commissioner shall find that the applicant meets all of the following criteria:

(1) Is eligible to designate this State as his or her home state or is a nonresident who is not eligible for a license under G.S. 58-33A-35.

(2) Has not committed any act that is a ground for denial, suspension, or revocation of a license as set forth in G.S. 58-33A-45.

(3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the Commissioner.

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in G.S. 58-33A-50.

(5) Has paid the fees set forth in G.S. 58-33-125.

(6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

(b) In addition to satisfying the requirements of subsection (a) of this section, an individual shall:

(1) Be at least 18 years of age; and

(2) Have successfully passed the public adjuster examination.

(c) The Commissioner may require any documents reasonably necessary to verify the information contained in the application.

"**§ 58-33A-25. Examination.**

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to G.S. 58-33A-30. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Commissioner.

(b) The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in G.S. 58-33-125.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Commissioner as set forth in G.S. 58-33-125.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

"**§ 58-33A-30. Exemptions from examination.**

(a) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 12 months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries indicate that the public adjuster is or was licensed in good standing.

(b) A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this State shall apply within 90 days after establishing legal residence to become a resident licensee pursuant to G.S. 58-33A-20. No prelicensing examination shall be required of that person to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in this State shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within 12 months after the cancellation of the applicant's previous license in this State and if, at the time of cancellation, the applicant was in good standing in this State.

"**§ 58-33A-35. Nonresident license reciprocity.**

(a) Unless denied licensure pursuant to G.S. 58-33A-45, a nonresident person shall receive a nonresident public adjuster license if the person meets all of the following criteria:

(1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state.

(2) The person has submitted the proper request for licensure, has paid the fees required by G.S. 58-33-125, and has provided proof of financial responsibility as required in G.S. 58-33A-50.

(3) The person has submitted or transmitted to the Commissioner the appropriate completed application for licensure.

(4) The person's home state awards nonresident public adjuster licenses to residents of this State on the same basis.

(b) The Commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the Commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where nonresident license is issued must be made as soon as possible, yet no later than 30 days after change in new state resident license. Licensee shall include new and old address. A new state resident license is required for nonresident licenses to remain valid. The new state resident license must have reciprocity with the licensing nonresident state(s) for the nonresident license not to terminate.

"**§ 58-33A-40. License.**

(a) Unless denied licensure under this Article, persons who have met the requirements of this Article shall be issued a public adjuster license.

(b) A public adjuster license shall remain in effect unless revoked, terminated, or suspended as long as the request for renewal and fee set forth in G.S. 58-33-125 is paid and any other requirements for license renewal are met by the due date.

(c) The licensee shall inform the Commissioner by any means acceptable to the Commissioner of a change of address, change of legal name, or change of information submitted on the application within 30 days after the change.

(d) A licensed public adjuster shall be subject to Article 63 of this Chapter.

(e) A public adjuster who allows his or her license to lapse may, within 12 months from the due date of the renewal, be issued a new public adjuster license upon the Commissioner's receipt of the request for renewal. However, an administrative fee in the amount of double the unpaid renewal fee shall be required for the issuance of the new public adjuster license. The new public adjuster license shall be effective the date the Commissioner receives the request for renewal and the late payment penalty.

(f) Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within 60 days after the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after 60 days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from the date of lapse, the person shall reapply for the license under this Article.

(g) A licensed public adjuster who is unable to comply with license renewal procedures because of military service, a long-term medical disability, or some other extenuating circumstance may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(h) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the Commissioner deems necessary.

(i) In order to assist in the performance of the Commissioner's duties, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to

licensing, including the collection of fees and data, that the Commissioner may deem appropriate.

"**§ 58-33A-45. License denial, nonrenewal, or revocation.**

(a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with G.S. 58-2-70 or any combination of actions for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(2) Violating any insurance laws or violating any regulation, subpoena, or order of the Commissioner or of another state's insurance regulator.

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(6) Having been convicted of a felony or a misdemeanor involving dishonesty or breach of trust.

(7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

(9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license.

(12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the Commissioner.

(13) Failing to comply with an administrative or court order imposing a child support obligation.

(14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) If the action by the Commissioner is to deny an application for or not renew a license, the Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the nonrenewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner in accordance with Article 3A of Chapter 150B of the General Statutes for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held pursuant to Article 3A of Chapter 150B of the General Statutes.

(c) The license of a business entity may be suspended, revoked, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the Commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil penalty according to G.S. 58-2-70.

(e) The Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Chapter against any person who is under investigation

for or charged with a violation of this Chapter, even if the person's license or registration has been surrendered or has lapsed by operation of law.

"**§ 58-33A-50. Bond or letter of credit.**

(a) Before issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the Commissioner through any of the following instruments:

(1) A bond executed and issued by an insurer authorized to issue bonds in this State which meets all of the following requirements:

a. It shall be in the minimum amount of twenty thousand dollars ($20,000).

b. It shall be in favor of this State and shall specifically authorize recovery by the Commissioner on behalf of any person in this State who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster.

c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.

(2) An irrevocable letter of credit issued by a qualified financial institution, which meets all of the following requirements:

a. It shall be in the minimum amount of twenty thousand dollars ($20,000).

b. It shall be to an account to the Commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster.

c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.

(b) The issuer of the evidence of financial responsibility shall notify the Commissioner upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.

(c) The Commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.

(d) The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

"**§ 58-33A-55. Continuing education.**

(a) An individual who holds a public adjuster license and who is not exempt under subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.

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

(1) Licensees not licensed for one full year before the end of the applicable continuing education biennium.

(2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this State on the same basis.

(c) Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of subsection (a) of this section.

"**§ 58-33A-60. Public adjuster fees.**

(a) A public adjuster shall not pay a commission, service fee, or other valuable consideration to a person for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(b) A person shall not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(c) A public adjuster may pay or assign commission, service fees, or other valuable consideration to persons who do not investigate or settle claims in this State, unless the payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).

(d) In the event of a catastrophic incident, there shall be limits on catastrophic fees, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value before settlement of a claim.

"**§ 58-33A-65. Contract between public adjuster and insured.**

(a) Public adjusters shall ensure that all contracts for their services are in writing and contain all of the following terms:

(1) Legible full name of the adjuster signing the contract, as specified in Department records.

(2) Permanent home state business address and phone number.

(3) Department license number.

(4) Title of "Public Adjuster Contract."

(5) The insured's full name, street address, insurance company name and policy number, if known or upon notification.

(6) A description of the loss and its location, if applicable.

(7) Description of services to be provided to the insured.

(8) Signatures of the public adjuster and the insured.

(9) Date contract was signed by the public adjuster and date the contract was signed by the insured.

(10) Attestation language stating that the public adjuster is fully bonded pursuant to state law.

(11) Full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services.

(b) The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

(1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

(2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

(3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner. Such a redaction shall constitute an omission of material fact in violation of Article 63 of this Chapter.

(c) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall comply with all of the following:

(1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim.

(2) Inform the insured that loss recovery amount might not be increased by insurer.

(3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time

spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(d) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, including but not limited to, any ownership of, other than as a minority stockholder, or any compensation expected to be received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company, or person.

(e) A public adjuster contract may not contain any contract term that includes any of the following terms:

(1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as a percentage of each check issued by an insurance company.

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.

(3) Imposes collection costs or late fees.

(4) Precludes a public adjuster from pursuing civil remedies.

(f) Before the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three types are as follows:

a. "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.

b. "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

c. "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.

(3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim. Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured's legal counsel.

(4) The public adjuster is not a representative or employee of the insurer.
(5) The salary, fee, commission, or other consideration is the obligation of the insured, not the insurer.

(g) The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner.

(h) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(i) The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three business day period.

(j) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days after the receipt by the public adjuster of the cancellation notice.

"**§ 58-33A-70. Escrow or trust accounts.**

A public adjuster who receives, accepts, or holds any funds on behalf of an insured, toward the settlement of a claim for loss or damage, shall deposit the funds in a noninterest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

"**§ 58-33A-75. Record retention.**

(a) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include all of the following:

(1) Name of the insured.
(2) Date, location, and amount of the loss.
(3) Copy of the contract between the public adjuster and insured.
(4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss.
(5) Itemized statement of the insured's recoveries.
(6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss.
(7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts.
(8) Name of public adjuster who executed the contract.
(9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company.
(10) Evidence of financial responsibility in a format prescribed by the Commissioner.

(b) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times.

(c) Records submitted to the Commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the Commissioner and shall not be subject to Chapter 132 of the General Statutes or G.S. 58-2-100.

"**§ 58-33A-80. Standards of conduct of public adjusters.**

(a) A public adjuster shall, under his or her license, serve with objectivity and complete loyalty the interest of his or her client alone; and render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Article.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in G.S. 58-33A-65.

(e) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in G.S. 58-33A-65.

(f) The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person described by any of the following criteria, unless disclosed to the insured:

(1) The public adjuster has a financial interest in the person.

(2) The public adjuster may receive direct or indirect compensation for the referral from the person.

(g) The public adjuster shall disclose to an insured if the public adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" includes any corporation, partnership, association, joint-stock company, or person.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

(i) Public adjusters shall adhere to all of the following general ethical requirements:

(1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise.

(2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements that are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client.

(3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster or independent adjuster on the same claim.

(4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three business day revocation or cancellation period.

(5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

(6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(j) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

(k) Public adjusters shall not solicit a client for employment between the hours of 9:00 P.M. and 9:00 A.M.

"**§ 58-33A-90. Reporting of actions.**

(a) A public adjuster shall report to the Commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this

State within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents.

(b) Within 30 days after the initial pretrial hearing date, the public adjuster shall report to the Commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

"**§ 58-33A-95. Rules.**

The Commissioner may, in accordance with Chapter 150B of the General Statutes, adopt rules that are necessary or proper to carry out the purposes of this Article."

SECTION 2. This act becomes effective July 1, 2010.

HOUSE BILL 1313:
Regulate Public Adjusters.-AB

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 10, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition H1313-CSRCf-34		

SUMMARY: ***House Bill 1313 is an agency bill that would enact a new Article 33A "Public Adjusters" of Chapter 58 to provide for the licensure, examination, continuing education, contracting policies, record retention, and standards of conduct of public adjusters operating in the State. The Bill contains provisions from the NAIC Model Act on Public Adjusters.***

House Bill 1313 will need to be referred to Senate Finance because it authorizes the payment of a fee to perform criminal history record checks as a part of determining license eligibility. The PCS makes technical changes to the provisions of the bill related to the criminal history record check.

CURRENT LAW: The North Carolina Administrative Code (11 NCAC 06A Section .0900 Public Adjusters) sets forth provisions regulating certain actions of public adjusters in the State, including adjuster transactions with insureds, and relationships with third parties.

NCAC 06A .091(2) defines 'public adjuster' to mean, "...any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under G.S. 58-33-30 or who is authorized to adjust under G.S. 58-33-70;"

G.S. 58-33-30 sets forth requirements for issuance of a license by the Commissioner of Insurance to agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This section addresses education and training, examinations, collection of examination and registration fees, denial of licensure, and reciprocity.

G.S. 58-33-70 authorizes the Commissioner to issue 90 day adjuster learner's permits and permit certain out of state adjusters to operate in state in certain limited circumstances.

BILL ANALYSIS: House Bill 1313 would enact a new Article 33A "Public Adjusters" of Chapter 58. The provisions of the new Article 33A would do the following:

- Define 'public adjuster' (acts on behalf of the insured to settle claims for loss or damage of real or personal property covered by an insurance contract; or advertises for or solicits business as an adjuster; or advises insureds about property loss or damage claims under insurance policies).
- Establish qualifications for licensure. The qualifications include payment of fees in G.S. 58-33-125. (See **BACKGROUND)**
- Provide for nonresident licensure reciprocity.
- Establish continuing education requirements.
- Require a bond or letter of credit for each licensed public adjuster.
- Set requirements for contracts between a public adjuster and an insured.
- Establish record retention requirements.
- Set standards of conduct for public adjusters.
- Authorize the Commissioner of Insurance to adopt rules to carry out the new Article.

EFFECTIVE DATE: This act becomes effective July 1, 2010.

Ben Popkin and Martha Walston, counsel to House Insurance and Finance Committees, substantially contributed to this summary.

H1313-SMRC-48(CSRCf-34) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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Short Title: Annual Financial Reporting.-AB (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE INSURANCE COMMISSIONER'S ABILITY TO MONITOR THE FINANCIAL CONDITION OF INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. Annual Financial Reporting.

"**§ 58-10-185. Purpose and scope.**

(a) The purpose of this Part is to improve the Commissioner's ability to monitor the financial condition of insurers by requiring (i) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (ii) communication of internal control related matters noted in an audit, and (iii) management's report of internal control over financial reporting.

(b) Every insurer, as defined in G.S. 58-10-190, shall be subject to this Part. Insurers having direct premiums written in this State of less than one million dollars ($1,000,000) in any calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this Part for the year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts of reinsurance of one million dollars ($1,000,000) or more will not be exempt.

(c) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the Commissioner to be substantially similar to the requirements in this Part, are exempt from G.S. 58-10-195 through G.S. 58-10-240 if:

(1) A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in G.S. 58-10-195, 58-10-230, and 58-10-235, respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.

(2) A copy of any notification of adverse financial condition report filed with the other state is filed with the Commissioner within the time specified in G.S. 58-10-225.

(d) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this State provided the other state has substantially similar reporting requirements and the report is filed with the Commissioner of the other state within the time specified.

(e) This Part shall not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers in accordance with G.S. 58-2-131 through G.S. 58-2-134, known as the Examination Law.

"**§ 58-10-190. Definitions.**

As used in this Part:

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with, a specific person has the same meaning set forth in G.S. 58-19-5.

(3) "Audit committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers at the election of the controlling person as provided in G.S. 58-10-245(f). If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in G.S. 58-10-200.

(5) "Controlling person" has the same meaning set forth in G.S. 58-19-5.

(6) "Group of insurers" means those licensed insurers included in the reporting requirements of Article 19 of this Chapter, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(7) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting from other known misrepresentations made by the insurer or its representatives.

(8) "Insurer" means any insurance entity as identified in Articles 7, 8, 11, 15, 17, 23, 24, 25, 26, 65, and 67 of this Chapter and regulated by the Commissioner.

(9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is, those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and includes those policies and procedures that meet all of the following criteria:

a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.

b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, that is,

those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and that receipts and expenditures are being made only in accordance with authorizations of management and directors.

c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, including those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6).

(10) "SEC" means the United States Securities and Exchange Commission, or any successor agency.

(11) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under that act.

(12) "Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Section 3A of the Sarbanes-Oxley Act of 2002.

(13) "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) Section 202. Preapproval requirements of Title II, Auditor Independence; (ii) Section 301. Audit Committees independence requirements of Title III, Corporate Responsibility; and (iii) Section 404. Management assessment of internal controls requirements of Title IV, Enhanced Financial Disclosures.

"**§ 58-10-195. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.**

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Commissioner of good cause for an extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection (b) of this section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

(d) Every insurer required to file an annual audited financial report pursuant to this Part shall designate a group of individuals as constituting its audit committee, as defined in G.S. 58-10-190. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee at the election of the controlling person.

"**§ 58-10-200. Contents of annual audited financial report.**

(a) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with G.S. 58-2-165(c). The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as

of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

(b) The annual audited financial report shall include the following:

(1) Report of independent certified public accountant.

(2) Balance sheet reporting admitted assets, liabilities, capital, and surplus.

(3) Statement of operations.

(4) Statement of cash flows.

(5) Statement of changes in capital and surplus.

(6) Notes to financial statements, which shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to G.S. 58-2-165(c) with a written description of the nature of these differences.

"**§ 58-10-205. Designation of independent certified public accountant.**

(a) Each insurer required by this Part to file an annual audited financial report must, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit. Insurers not retaining an independent certified public accountant on the effective date of this Part shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant and file a copy with the Commissioner stating that the accountant is aware of the provisions of the insurance laws and the regulations of the State of North Carolina that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statement in terms of its conformity to the statutory accounting practices prescribed or otherwise permitted by the Commissioner, specifying such exceptions as he or she may believe appropriate.

(c) If an accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter within 10 business days after the notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section could include, but are not limited to, disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own.

"**§ 58-10-210. Qualifications of independent certified public accountant.**

(a) The Commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(1) Is not in good standing with the North Carolina State Board of CPA Examiners and in all other states in which the accountant is licensed to

practice, or, for a Canadian or British company, that is not a chartered accountant; or

(2) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

(b) Except as otherwise provided in this Part, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the NC State Board of Certified Public Accountant Examiners or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Article 30 of this Chapter, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(d) Lead audit partner rotation required.

(1) The lead or coordinating audit partner, having primary responsibility for the audit, may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may apply to the Commissioner for relief from the rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The Commissioner may consider any of the following factors in determining if the relief should be granted:

a. The number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm.

b. The premium volume of the insurer.

c. The number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (d)(1) with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

(e) The Commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared, in whole or in part, by a natural person who meets any of the following criteria:

(1) The person has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968k, or any dishonest conduct or practices under federal or state law.

(2) The person has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this Part.

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Part.

(f) The Commissioner may, as provided in GS 58-2-50, hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this Part and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Part.

(g) Independence of services.

(1) The Commissioner shall not recognize as a qualified independent certified public accountant nor accept an annual audited financial report prepared, in whole or in part, by an accountant who provides to an insurer, contemporaneously with the audit, any of the following non-audit services:

a. Bookkeeping or other services related to the accounting records or financial statements of the insurer.

b. Financial information systems design and implementation.

c. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.

d. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if all of the following conditions have been met:

1. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.

2. The insurer has competent personnel, or engages a third party actuary to estimate the reserves for which management takes responsibility.

3. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.

e. Internal audit outsourcing services.

f. Management functions or human resources.

g. Broker or dealer, investment adviser, or investment banking services.

h. Legal services or expert services unrelated to the audit.

i. Any other services that the Commissioner determines, by administrative rule, are impermissible.

(2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than one hundred million dollars ($100,000,000) in any calendar year may request an exemption from subdivision (g)(1) of this section. The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this Part would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(i) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subdivision (g)(1) of this section or that do not conflict with the principles set forth in subdivision (g)(2) of

this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (j) of this section.

(j) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX-compliant entity or is a direct or indirect wholly owned subsidiary of a SOX-compliant entity or all of the following apply:

(1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided.

(2) The services were not recognized by the insurer at the time of the engagement to be non-audit services.

(3) The services are promptly brought to the attention of the audit committee and approved before the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (j) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(l) Cooling-off period.

(1) The Commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may apply to the Commissioner for relief from this requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (1) of this subsection with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

"**§ 58-10-215. Consolidated or combined audits.**

An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency of the insurer and affects the integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet that meets all of the following criteria shall be filed with the report:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

(2) Amounts for each insurer subject to this section shall be stated separately.

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

(4) Explanations of consolidating and eliminating entries shall be included.

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

"**§ 58-10-220. Scope of audit and report of independent certified public accountant.**

Financial statements furnished pursuant to G.S. 58-10-200 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to G.S. 58-10-255, the independent certified public accountant should consider, as that term is defined in "Statement on Auditing Standards No. 102 of the AICPA Professional Standards, Defining Professional Requirements in Statements on Auditing Standards" or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the independent certified public accountant deems necessary.

"**§ 58-10-225. Notification of adverse financial condition.**

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of G.S. 58-7-75 as of that date. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the Commissioner within five business days after receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) of this section if the statement is made in good faith in compliance with that subsection.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this Part, becomes aware of facts that might have affected his or her report, the Commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

"**§ 58-10-230. Communication of internal control related matters noted in an audit.**

(a) In addition to the annual audited financial report, each insurer shall furnish the Commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness, as the term "material weakness" is defined by "Statement on Auditing Standards 112 of the AICPA Professional Standards, Communication of Internal Control Related Matters Noted in an Audit," or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report described in G.S. 58-10-195(a) in the insurer's internal control over financial

reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses are noted, the communication should so state.

(b) The insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

"§ 58-10-235. Accountant's letter of qualifications.

The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating all of the following:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the NC State Board of Certified Public Accountant Examiners Board of Public Accountancy, or similar code.

(2) The background and experience in general and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Part shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where their use is consistent with the standards prescribed by generally accepted auditing standards.

(3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this Part and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

(4) That the accountant consents to the requirements of G.S. 58-10-240 and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the work papers, as described in G.S. 58-10-240.

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.

(6) A representation that the accountant is in compliance with the requirements of G.S. 58-10-210.

"§ 58-10-240. Definition, availability, and maintenance of independent certified public accountants' work papers.

(a) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this Part shall require the accountant to make available for review by the Commissioner all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the offices of the Commissioner, or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the date of the audit report.

(c) In the conduct of the periodic review by the Commissioner's examiners in subsection (b) of this section, copies of pertinent audit work papers may be made and retained

by the Commissioner. Such reviews by the Commissioner's examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations, shall be confidential.

"**§ 58-10-245. Requirements for audit committees.**

(a) This section shall not apply to foreign or alien insurers licensed in this State or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

(b) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work. Each accountant shall report directly to the audit committee.

(c) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (f) of this section and G.S. 58-10-190(3).

(d) In order to be considered independent for purposes of this section, a member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity. However, if North Carolina law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(e) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(f) To exercise the election of the controlling person to designate the audit committee, the ultimate controlling person shall provide written notice of the affected insurers to the Commissioner. Notification shall be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(g) Reports from accountant.

(1) The audit committee shall require the accountant that performs for an insurer any audit required by this Part to timely report to the audit committee in accordance with the requirements of Statement on Auditing Standards No. 61 of the AICPA Professional Standards, Communication with Audit Committees, or its replacement, including all of the following:

a. All significant accounting policies and material permitted practices.

b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant.

c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by subdivision (g)(1) of this section may be provided to the

audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
$0 – $300,000,000	Over $300,000,000 – $500,000,000	Over $500,000,000
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

The Commissioner shall require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer. The Commissioner may order any insurer with less than five hundred million dollars ($500,000,000) in prior year direct written and assumed premiums to structure its audit committee with at least a supermajority of independent audit committee members. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(i) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars ($500,000,000) may apply to the Commissioner for a waiver from the requirements in this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

"**§ 58-10-250. Conduct of insurer in connection with the preparation of required reports and documents.**

(a) No director or officer of an insurer shall, directly or indirectly, do any of the following:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this Part.

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this Part.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this Part if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection (b) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant to do any of the following:

(1) Issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards.
(2) Not perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards.
(3) Not withdraw an issued report.
(4) Not communicate matters to an insurer's audit committee.

"**§ 58-10-255. Management's report of internal control over financial reporting.**

(a) Every insurer required to file an audited financial report pursuant to this Part that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars ($500,000,000) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in G.S. 58-10-190. The report shall be filed with the Commissioner along with the communication of internal control related matters noted in an audit described under G.S. 58-10-230. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection (a) of this section, the Commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in G.S. 58-30-60(b).

(c) An insurer or a group of insurers that is:
(1) Directly subject to Section 404;
(2) Part of a holding company system whose parent is directly subject to Section 404;
(3) Not directly subject to Section 404 but is a SOX-compliant entity; or
(4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX-compliant entity

may file its or its parent's Section 404 report and an addendum in satisfaction of this subsection's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through 58-10-200(b)(6) that were excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a G.S. 58-10-255 report, or (ii) the Section 404 report and a G.S. 58-10-255 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

(d) Management's report of internal control over financial reporting shall include all of the following:
(1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.
(2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial

reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.

(4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting.

(6) A statement regarding the inherent limitations of internal control systems.

(7) Signatures of the chief executive officer and the chief financial officer, or equivalent position/title.

(e) Management shall document and make available upon a financial condition examination the basis upon which its assertions, required in subsection (d) of this section, are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation. Management's report on internal control over financial reporting, required by subsection (a) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Commissioner.

"**§ 58-10-260. Exemptions and effective dates.**

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this Part if the Commissioner finds, upon review of the application, that compliance with this Part would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days after a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Domestic insurers retaining a certified public accountant on the effective date of this Part who qualify as independent shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(c) Foreign insurers shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(d) The requirements of G.S. 58-10-210(d) shall become effective for audits of the year beginning January 1, 2010, and each year thereafter.

(e) The requirements of G.S. 58-10-245 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes

subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(f) The requirements of G.S. 58-10-255 become effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. An insurer acquired in a business combination shall have two calendar years after the date of acquisition or combination to comply with the reporting requirements.

"**§ 58-10-265. Canadian and British companies.**

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(b) For such insurers, the letter required in G.S. 58-10-205(b) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to G.S. 58-10-195 and shall affirm that the opinion expressed is in conformity with those requirements."

SECTION 2. G.S. 58-23-26(a) and (c) read as rewritten:

"(a) Each pool shall have an annual audit by an independent certified public ~~accountant,~~accountant, pursuant to Part 7 of Article 10 of this Chapter, at the expense of the pool, and shall make a copy of the audit available to the governing body or chief executive officer of each member of the pool. A copy of the audit shall be filed with the Commissioner within 130 days after the end of the pool's fiscal year, unless that time is extended by the Commissioner. The annual audit shall report the financial position of the pool in conformity with statutory accounting practices prescribed or permitted by the Commissioner.

...

(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, Part 7 of Article 10, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 3. G.S. 58-65-2 is amended by adding a new statutory reference to read:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

...

Part 7 of Article 10. Annual Financial Reporting. "

SECTION 4. G.S. 58-67-171 is amended by adding two new statutory references to read:

"**§ 58-67-171. Other laws applicable to HMOs.**

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

...

Part 7 of Article 10. Annual Financial Reporting."

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

HOUSE BILL 1314:
Annual Financial Reporting.-AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 7, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition H1314-CSRC-33		Committee Counsel

SUMMARY: ***House Bill 1314 would add a new Part that requires the following: (i) an annual audit of insurers' financial statements by independent certified public accountants; (ii) communication of internal control related matters noted in the audit; and (iii) management's report of internal control over financial reporting. The PCS corrects a formatting error in Sections 3 and 4 of the bill.***

BILL ANALYSIS: **Section 1** adds a new Part 7 to Chapter 58, *Insurance*, of the General Statutes entitled "Annual Financial Reporting." This Part includes the following new sections:

- **G.S. 58-10-185 Purpose and Scope**

  This section adds language requiring the following: (i) an annual audit of insurers' financial statements by independent certified public accountants; (ii) communication of internal control related matters noted in the audit; and (iii) management's report of internal control over financial reporting.

  This section also provides that insurers having direct premiums written in the State of less than $1 million in a calendar year and fewer than 1,000 policyholders or certificate holders nationwide at the end of the calendar year are exempt from the Article unless the Commissioner finds that compliance is necessary.

  Foreign or alien insurers filing the financial report in another state are exempt from the audited financial reporting requirements if a copy of the audited financial report, communication of internal control related matters and the accountant's letter of qualifications filed in another state are filed with the Commissioner.

  Foreign or alien insurers required to file a substantially similar management's report of internal control in another state are exempt from filing the report in this State.

- **G.S. 58-10-190 Definitions**

- **G.S. 58-10-195 General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment**

  Reports must be prepared by an independent certified public accountant and filed on or before June 1 for the year ending December 31 immediately preceding. Extensions may be granted for 30 day periods upon a showing by the insurer and its certified public accountant of the reasons for the extension and upon a determination of good cause by the Commissioner. If an extension is granted, then a similar extension of 30 days is granted to the filing of the management's report of internal control.

  Every insurer must designate a group of individuals as constituting its audit committee.

- **G.S. 58-10-200 Contents of annual audited financial report**

  The financial report must show the financial position of the insurer as of the end of the most recent calendar year and the results of its operation, cash flows, and changes in capital and surplus for the

year then ended and must include similar language and groupings as information submitted in the insurer's annual statement filed with the Commissioner. Data comparing the current year to the year immediately preceding must also be included.

The report must include the following: (1) report of an independent CPA; (2) balance sheet reporting admitted assets, liabilities, capital and surplus; (3) statement of operations; (4) statement of cash flows; (5) statement of changes in capital and surplus; and (6) notes to financial statements as required by the NAIC Annual Statement Instructions.

- **G.S. 58-10-210 Qualifications of independent certified public accountant**

The Commissioner shall not recognize a CPA if the CPA: (1) is not in good standing with the NC State Board of CPA Examiners and in all other states in which he or she is licensed to practice; (2) has directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

Unless otherwise provided, the Commissioner shall recognize a CPA if he or she conforms to the specified ethical and professional standards of his or her profession. Mediation or arbitration agreements may be entered into with the insurer to settle disputes relating to the audit.

The lead or coordinating audit partner having primary responsibility for the audit must be subject to rotation and may not act as lead partner for more than 5 consecutive years, unless otherwise approved by the Commissioner.

The Commissioner may not accept audit reports prepared by a natural person who has been convicted of fraud, bribery, violation of insurance laws with respect to previous reports or has demonstrated a patter of failing to detect or disclose material information in previous reports.

The Commissioner may hold a hearing to determine whether a person is qualified.

A person is not an independent CPA if he or she provides the following non-audit services contemporaneously with the audit: (1) bookkeeping; (2) financial information systems design and implementation; (3) appraisal or valuation services; (4) actuarially-oriented services; (5) internal audit outsourcing; (6) management or human resources functions; (7) broker, dealer, investment adviser or investment banking services; legal or other expert services unrelated to the audit; (8) any other impermissible services as determined by the Commissioner. An insurer having direct premiums of less than $100,000,000 may request an exemption from these restrictions.

This section includes a basic statement of principles providing that, to be independent, the CPA may not function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer. The CPA may engage in any other services not specifically listed or not in violation of this statement of principles only if the activity is approved in advance by the audit committee.

All audit and non-audit services provided by the CPA must be preapproved by the audit committee. Certain SOX-compliant entities are exempt from this requirement for non-audit services. An SOX-compliant entity is an insurer that is compliant with the auditor independence, audit committee, and internal control provisions of the federal Sarbanes-Oxley Act.

The audit committee may delegate preapproval of audit and non-audit services to one or more designated members of the committee.

- **G.S. 58-10-215 Consolidated or combined audits**

An insurer may seek approval from the Commissioner for approval to file a consolidated or combined financial statement if the insurer is part of a group of insurers that uses a pooling or 100% reinsurance agreement affecting solvency.

- **G.S. 58-10-220 Scope of audits**

  The audit must be conducted in accordance with generally accepted auditing standards, including those specifically referenced in this section.

- **G.S. 58-210-225 Notice of adverse financial condition**

  The insurer required to furnish the annual audited financial report shall require the independent CPA to report, in writing, within 5 business days to the board of directors or the auditing committee any determination by the independent CPA that the insurer has materially misstated its financial condition as reported to the Commissioner or that the insurer does not meet the minimum capital and surplus requirements under Chapter 58. The insurer must forward the report to the Commissioner within 5 business days of receipt and shall provide evidence to the CPA of the report being forwarded to the Commissioner. If the CPA fails to receive the evidence, he or she shall furnish a copy of the report to the Commissioner.

- **G.S. 58-10-230 Communication of internal control related matters noted in an audit**

  This section contains the requirement for insurer to file, in addition to the annual audit financial report, written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit. This communication is to be prepared by the CPA within 60 days of the filing of the annual audited financial report.

- **G.S. 58-10-235 Accountant's letter of qualifications**

  The CPA must furnish the insurer, for inclusion in the annual audited financial report, a letter stating the CPA's independence, background and experience, that the audit will be filed in accordance with this Part, that the CPA is licensed and in compliance with the qualifications section of this Part, and that the CPA understands the work papers requirements of G.S. 58-10-240.

- **G.S. 58-10-240 Definition, availability, and maintenance of independent certified public accountants' work papers**

  This section defines work papers and requires the CPA to make available for review by the Commissioner all work papers prepared in the conduct of the audit. The insurer must require that the accountant retain the work papers until the Commissioner has filed a report covering the audit period, but no longer than 7 years. The Commissioner may make copies of the work papers, but the papers shall remain confidential.

- **G.S. 58-10-245 Requirements for audit committees**

  This section does not apply to SOX-compliant entities or foreign or alien insurers. An SOX-compliant entity is an insurer that is compliant with the auditor independence, audit committee, and internal control provisions of the federal Sarbanes-Oxley Act.

  The audit committee is responsible for the appointment, compensation, and oversight of the work of any CPA under this Part. Each member of the committee must be a member of the board of directors of the insurer or of the board of directors of the entity controlling a group of insurers.

  To be considered independent, members of the audit committee may not accept any fee or compensation other than in his or her capacity as a member of the audit committee or board of directors, unless board participation is otherwise required by NC law. If a member is no longer

independent, then he or she may remain a member of the committee until the next annual meeting of the insurer or for one year, whichever is earlier.

The audit committee shall require the CPA to perform the audit in a timely manner and in accordance with specified auditing, professional standards.

The following independent membership requirements apply:

Direct written or assumed premiums

$0-$300,000,000	No minimum requirements
$300,000,000-$500,000,000	Majority must be independent
Over $500,000,000	Supermajority (75%) must be independent

The Commissioner may require improvements to the independence levels of the committee if the insurer is in a risk-based capital level event, meets one or more of the standards to be deemed in hazardous financial condition, or exhibits qualities of a troubled insurer.

Certain insurers may seek a waiver from these requirements in the case of hardship.

- **G.S. 58-10-250 Conduct of insurer in connection with the preparation of required reports and documents**

  No director or officer of an insurer shall directly or indirectly make or cause to be made materially false or misleading statements to the CPA or omit to state or cause another person to omit to state any material fact in order to make statements made not misleading to a CPA.

  No director or officer of an insurer or other person acting under the direction of an officer or director shall directly influence or indirectly influence take any action to coerce, manipulate, mislead, or fraudulently influence any CPA if that person knew or should have known that the action could result in rendering the CPA's financial statements materially misleading.

- **G.S. 58-10-255 Management's report of internal control over financial reporting**

  This section includes the requirement that insurers prepare a report on their internal control over financial reporting with the communication of internal control required under G.S. 58-10-230. Every insurer required to file an audited financial report is required to file the internal control report with certain exceptions. Notwithstanding the premium thresholds requiring the filing of an audited financial report, the Commissioner may require the report of internal control if the insurer is in a risk-based capital event or is in a hazardous financial condition.

  Statements and information to be included in the internal control report are outlined in this section.

- **G.S. 58-10-260 Exemptions and effective dates**

  The Commissioner may grant an exemption from any and all of the requirements of this Part if compliance would constitute a financial or organizational hardship upon the insurer.

Sections 2, 3 and 4 of the bill make technical and conforming changes.

EFFECTIVE DATE: House Bill 1314 is effective when it becomes law.

H1314-SMRC-43(CSRC-33) v1

Tim Hovis, Counsel to the House Insurance Committee, contributed substantially to the drafting of this summary.

SENATE COMMERCE COMMITTEE
Tuesday, June 16, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 16, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles presided. Abigail Buckner, Anderson Gibbons, and Daniel Boyd of Gastonia, Sara Lane of Garner, Kevin Cheung of Taylorsville, Kaja Williamson of Wilson, Katie Laverdure of Wilmington, Ashley Grice of Whiteville and Andrew Levine of Charlotte served as pages.

HB 723 – Electronic Reporting of Abandoned Property - AB.

Representative Tucker was recognized to explain the bill. It requires holders of abandoned property with fifty or more property owner records to file electronically with the Office of the State Treasurer, allows holders with less than fifty property owner records to file electronically, and allows holders reporting electronically to file an electronic affidavit. Senator Rand moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 746 – Amend Professional Counselors Act/Fees.

Representative Insko was recognized to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the Licensed Professional Counselors Act and allows the North Carolina Board of Licensed Professional Counselors to increase certain fees. Kory Goldsmith, a staff attorney with the Research Division, was recognized to answer questions. Senator Rand offered an amendment which eliminated a repealing section. Ashley Perkinson, lobbyist for the NC Board of Licensed Professional Counselors, was recognized to answer questions. Senator Goss moved for a favorable report and the motion carried. A copy of the PCS, the amendment and the summary is attached.

HB 749 – Use of Cisterns in Construction/Renovation.

Representative Alexander was recognized to explain the bill. It authorizes the State Building Code to permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation in the construction or renovation of residential or commercial buildings or structures, and prohibits any state, county or local building code or regulation from prohibiting the use of cisterns for these uses. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

HB 1034 – Allow Recorded Phone Messages/Public Safety.

Representative Glazier requested that the bill be displaced from the agenda to be heard at a later date.

HB 1035 – UNC Performance & Payment Bond Modification.

Representative Glazier was recognized to explain the bill and answer questions. The bill increases the performance and payment bonding requirement for construction project contracts awarded by The University of North Carolina that exceed five hundred thousand dollars. Rob Nelson, Vice President of Finance – UNC, was recognized to speak in favor of the bill and to answer questions. John McMillan, lobbyist for the American Insurance Association, was recognized to speak in opposition to the bill. Gary Gummerson, Vice President of the Morrow Insurance Agency, was recognized to speak in opposition to the bill and answer questions. Due to the amount of information requested by members, the bill was displaced from the agenda to be heard at a later meeting. A copy of the bill and the summary is attached.

The meeting adjourned at 11:47 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 16, 2009

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

FAVORABLE

H.B. **723** Electronic Reporting of Abandoned Property.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **749** Use of Cisterns in Construction/Renovation.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

H723 – Sen. Dorsett
H749 -

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 16, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins
HB 723	Electronic Reporting of Abandoned Property.-AB	Representative Tucker
HB 746	Amend Professional Counselors Act/Fees.	Representative Insko
HB 749	Use of Cisterns in Construction/Renovation.	Representative Alexander
HB 1034	Allow Recorded Phone Messages/Public Safety.	Representative England, M.D. Representative Barnhart Representative Glazier
HB 1035	UNC Performance & Payment Bond Modification.	Representative Goforth Representative Yongue Representative McLawhorn Representative Glazier
HB 1409	Building Code Exclusion/Certain Wiring.	Representative Justice Representative Gibson, III Representative Grady Representative Owens, Jr.
HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Justus Representative Johnson Representative Brisson

HB 1478	Design Professional Seals/Public Records.	Representative Tillis
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, June 16, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 723	Electronic Reporting of Abandoned Property.-AB	Rep. Tucker
HB 746	Amend Professional Counselors Act/ Fees.	Rep. Insko
HB 749	Use of Cisterns in Construction/ Renovation.	Rep. Alexander
HB 1034	Allow Recorded Phone Messages/Public Safety.	Rep. England Rep. Barnhart Rep. Glazier
HB 1035	UNC Performance & Payment Bond Modification.	Rep. Goforth Rep. Yongue Rep. McLawhorn Rep. Glazier

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
Rob Nelson	UNC
David Crawford	A/A NC
James Wrenn	NCGA intern
Carol Durrell	State Health Plan.
Anita Watkins	UNC GA
Erin Schultz	UNC GA
Betsy Bailey	PE of NC
Suzanne Walker	LAC ANC
David Boaz	MWC
Peter Gelb	Horse Sight Appraisal

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
MB Burnett	SEC STATE
Jessi Hays	NCHBA
Cady Thomas	NCAR
Debra DeCamillis	UNC-IOG
Larry Bewley	LBA
Katrina Englisen	NCCN
Victoria Hawkins	Bode & Assoc.
[illegible]	JD, AL, PA
Spros Pleggos	DOA
Daniel Baum	K&L Gates
[illegible]	FCC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lindsay Clifton	Governor's office
Taylor Ansley	Z. Smith Reynolds Foundation
Sarah Welker	Z. Smith Reynolds Foundation
Jill Ray	ZSRF
LaRita M. Bell	ZSRF
Hawley Truax	"
Hearney Hatalla	N.C.B.A.
R. Paul Wilms	WGR
John Goodman	KC CHAMBER

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
D Langum	NCIMS
John McMillan	MF&S
Michelle Frazier	MF&S
Chris McLamb	Raleigh
Emily Gallimore	NCBA
DAVE SIMPSON	CACC
Kathryn Chadwick	Carolinas Surety Assoc. / Travelers
Gary Gemmerson	" " "
L C Pegram	DLC
Barbara Carsley	BBC GR

COMMERCE, 6-16

Abigail Buckner, Gastonia, Hoyle
Anderson Gibbons, Gastonia, Hoyle
Daniel Boyd, Gastonia, Hoyle
Sara Lane, Garner, Blue
Kevin Cheung, Taylorsville, Goss
Kaja Williamson, Wilson, Rand
Katie Laverdure, Wilmington, Soles
Ashley Grice, Whiteville, Soles
Andrew Levine, Charlotte, Rucho

HOUSE BILL 723

Short Title:	Electronic Reporting of Abandoned Property.-AB	(Public)
Sponsors:	Representatives Tucker; and Hughes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary III.	

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOLDERS OF ABANDONED PROPERTY WITH FIFTY OR MORE PROPERTY OWNER RECORDS TO FILE ELECTRONICALLY WITH THE OFFICE OF THE STATE TREASURER, TO ALLOW HOLDERS WITH LESS THAN FIFTY PROPERTY OWNER RECORDS TO FILE ELECTRONICALLY, AND TO ALLOW HOLDERS REPORTING ELECTRONICALLY TO FILE AN ELECTRONIC AFFIDAVIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-60 reads as rewritten:

"**§ 116B-60. Report of abandoned property; certification by holders with tax return.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting 50 or more property owner records shall file the report in an electronic format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically. Holders reporting electronically may file an electronically signed affidavit in order to comply with subsection (f) of this section.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day."

SECTION 2. This act becomes effective October 1, 2009.

HOUSE BILL 723:
Electronic Reporting of Abandoned Property.- AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 16, 2009
Introduced by:	Rep. Tucker	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 723 would require the holder of abandoned property with fifty or more owner records to file reports electronically with the State Treasurer. The bill would allow holders with less than fifty property owner records to file electronically and would allow all holders who file reports electronically to also file a signed affidavit electronically.***

CURRENT LAW: Under current law, a holder of abandoned property is required to file a report with the Treasurer concerning the property. The report must include:

1. A description of the property.
2. Identifying information about the property owner if the property value is $50.00 or more, except for traveler's checks and money orders.
3. An aggregated amount of items valued under $50.00 each.
4. In the case of an annuity or life insurance policy valued at $50.00 or more, the name and address of the insured and the beneficiary.
5. The date the property became payable and the date of the last communication with the owner.
6. Other information deemed necessary by the Treasurer.

The holder of the property must also file an affidavit that the holder has made a good faith effort to locate the apparent owner as provided by law.

BILL ANALYSIS: House Bill 723 would require holders who report 50 or more property owner records to file the report electronically in a format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records would be allowed, but not required, to file the report electronically. Any holder who files the report electronically would also be allowed to electronically file the signed affidavit stating that a good faith effort has been made to locate the apparent owner.

EFFECTIVE DATE: This act would become effective October 1, 2009.

Karen Cochrane-Brown substantially contributed to this summary.

H723-SMSU-109(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 746*

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/20/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H746-CSRCf-38 [v.2]

6/15/2009 7:28:43 PM

Short Title: Amend Professional Counselors Act/Fees. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LICENSED PROFESSIONAL COUNSELORS ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-330 reads as rewritten:

"**§ 90-330. Definitions; practice of ~~marriage and family therapy.~~counseling.**

(a) Definitions. – As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(2a) A "licensed professional counselor associate" is a person engaged in the supervised practice of counseling who holds a license as a licensed professional counselor associate issued under the provisions of this Article.

(2b) A "licensed professional counselor supervisor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor and is approved by the Board to provide clinical supervision under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. – Assisting individuals, groups, and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to

personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. – Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. – Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. – Identifying problems requiring referral to other specialists.

e. Research Activities. – Designing, conducting, and interpreting research with human subjects.

The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

(4) A "supervisor" means any licensed professional counselor supervisor or, when one is inaccessible, a licensed professional counselor or an ~~equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience~~equivalently and actively licensed mental health professional, as determined by the Board, who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No person licensed as a licensed professional counselor or licensed professional counselor associate under the provisions of this Article shall be allowed to hold himself or herself out to the public as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law."

SECTION 2. G.S. 90-331 reads as rewritten:

"**§ 90-331. Prohibitions.**

It shall be unlawful for any person who is not licensed under this Article to engage in the practice of counseling, use the title ~~"licensed professional counselor",~~"Licensed Professional Counselor Associate," "Licensed Professional Counselor," or "Licensed Professional Counselor Supervisor," use the letters "LPCA," ~~"LPC",~~ "LPC," or "LPCS," use any facsimile or combination of these words or letters, abbreviations, or insignia, or indicate or imply orally, in writing, or in any other way that the person is a licensed professional counselor."

SECTION 3. G.S. 90-332.1 reads as rewritten:

"**§ 90-332.1. Exemptions from licensure.**

(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

(1) Lawyers licensed under Chapter 84, doctors licensed under Chapter 90, and any other person registered, certified, or licensed by the State to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which the person is registered, certified, or licensed.

(2) Any school counselor certified by the State Board of Education while counseling within the scope of employment by a board of education or private school.

(3) Any student intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher learning or training institution, if the intern or trainee is a designated "counselor intern" and the activities and services constitute a part of the supervised course of study.

~~(4) Any person counseling as a supervised counselor in a supervised professional practice under G.S. 90-336(b)(2).~~

(4a) Any person counseling within the scope of employment ~~at a local community college.~~ at: (i) a local community college as defined in G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) a private higher education institution as defined in G.S. 116-22(1).

~~(4b) Any person counseling within the scope of employment at a private higher education institution as defined in G.S. 116-22(1).~~

(5) Any ordained minister or other member of the clergy while acting in a ministerial capacity who does not charge a fee for the service, or any person invited by a religious organization to conduct, lead, or provide counseling to its members when the service is not performed for more than 30 days a year.

(6) Any nonresident temporarily employed in this State to render counseling services for not more than 30 days in a year, if the person holds a license or certificate required for counselors in another state.

(7) Any person employed by State, federal, county, or municipal government while counseling within the scope of employment.

~~(8) Any person performing counseling solely as an employee of an area facility, as defined in G.S. 122C-3(14)a., if both of the following apply:~~

~~a. The services are provided by (i) a qualified professional as defined in G.S. 122C-3(31) and subject to the rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, or (ii) an employee supervised by a qualified professional as defined in G.S. 122C-3(31);~~

~~b. The area facility has obtained written verification from the following boards that the employee has not had his or her license, registration, or certification revoked, rescinded, or suspended: the North Carolina Board of Licensed Professional Counselors, the North Carolina State Board of Examiners of Practicing Psychologists, the North Carolina Social Work Certification and Licensure Board, and the North Carolina Marriage and Family Therapy Licensure Board;~~

~~(9) Any person performing counseling as an employee of a hospital or other health care facility licensed under Chapter 131D, 131E, or 122C who is performing this counseling under the supervision of a qualified professional as defined in G.S. 122C-3(31); and~~

~~(10) Any employee assistance professional providing core specific employee assistance program (EAP) activities, as defined by the Employee Assistance Professionals Association Standards for Employee Assistance Programs Part II: Professional Guidelines (1988).~~

(b) Persons who claim to be exempt under subsection (a) of this section are prohibited from advertising or offering themselves as "licensed professional counselors".

(c) Persons licensed under this Article are exempt from rules pertaining to counseling adopted by other occupational licensing boards.

(d) Nothing in this Article shall prevent a person from performing substance abuse counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter."

SECTION 4. G.S. 90-333 reads as rewritten:

"**§ 90-333. North Carolina Board of Licensed Professional Counselors; appointments; terms; composition.**

(a) For the purpose of carrying out the provisions of this Article, there is hereby created the North Carolina Board of Licensed Professional Counselors which shall consist of seven

members appointed by the Governor in the manner hereinafter prescribed. Any State or nationally recognized professional association representing professional counselors may submit recommendations to the Governor for Board membership. The Governor may remove any member of the Board for neglect of duty or malfeasance or conviction of a felony or other crime of moral turpitude, but for no other reason.

(b) At least five members of the Board shall be licensed professional counselors except that initial appointees shall be persons who meet the educational and experience requirements for licensure as licensed professional counselors under the provisions of this Article; and two members shall be public-at-large members appointed from the general public. Composition of the Board as to the race and sex of its members shall reflect the ~~composition of the~~ population of the State and each member shall reside in a different congressional district.

(c) At all times the Board shall include at least one counselor primarily engaged in counselor education, at least one counselor primarily engaged in the public sector, at least one counselor primarily engaged in the private sector, and two licensed professional counselors at large.

(d) All members of the Board shall be residents of the State of North Carolina, and, with the exception of the public-at-large members, shall be licensed by the Board under the provisions of this Article. Professional members of the Board must be actively engaged in the practice of counseling or in the education and training of students in counseling, and have been for at least three years prior to their appointment to the Board. The engagement in this activity during the two years preceding the appointment shall have occurred primarily in this State.

(e) The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, three shall be appointed for terms of one year, two for terms of two years, and two for terms of three years. No member shall serve more than two consecutive three-year terms.

(f) Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term. Appointees to the Board shall continue to serve until a successor is appointed and qualified.

(g) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(h) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board."

SECTION 5. G.S. 90-334 reads as rewritten:

"**§ 90-334. Functions and duties of the Board.**

(a) The Board shall administer and enforce the provisions of this Article.

(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for licenses under this Article, and shall issue a license or renewal of license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Article from ~~the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year.~~ fees paid to the Board pursuant to this section. No State appropriations shall be subject to the administration of the Board.

(f) The Board shall establish and receive fees not to exceed ~~one~~ two hundred dollars ~~($100.00)~~($200.00) for initial or renewal ~~application, not to exceed one hundred dollars ($100.00) for examination,~~application and not to exceed ~~twenty-five~~seventy-five dollars ~~($25.00)~~($75.00) for late renewal, maintain Board accounts of all receipts, and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Article.

(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for licensure and license renewal, including but not limited to the power to adopt or use examination materials and accreditation standards of any recognized counselor accrediting agency and the power to establish reasonable standards for continuing counselor education.

(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purposes of this Article, including but not limited to the power to adopt ethical and disciplinary standards.

(i) The Board shall establish the criteria for determining the qualifications constituting "supervised professional practice".

(j) The Board may ~~examine counselor applicants,~~examine, approve, issue, deny, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Article, and conduct hearings in connection with these actions.

(k) The Board shall investigate, subpoena individuals and records, and take necessary appropriate action to properly discipline persons licensed under this Article and to enforce this Article."

SECTION 6. G.S. 90-336 reads as rewritten:

"**§ 90-336. Title and qualifications for licensure.**

(a) Each person desiring to be a licensed professional counselor associate, licensed professional ~~counselor~~ counselor, or licensed professional counselor supervisor shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee.

(b) The Board shall issue a license as ~~"licensed professional counselor"~~a "licensed professional counselor associate" to an applicant who meets all of the following criteria:

(1) ~~Has earned one of the following:~~

~~a. A masters degree in counseling from a regionally accredited institution of higher education, which includes a minimum of 48 semester hours.~~

~~b. A graduate degree in a related field supplemented with courses that the Board determines to be substantially equivalent.~~

Has earned a minimum of 48 semester hours or 72 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2009; a minimum of 54 semester hours or 81 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2013, but after June 30, 2009; or a minimum of 60 semester hours or 90 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program after June 30, 2013.

~~(2) Has had no less than two years of masters or post masters counseling experience, or of both, in a professional setting, including a minimum of 2,000 hours of supervised professional practice as defined by the Board.~~

(3) Has passed an examination ~~as~~ in accordance with rules adopted by the Board.

(c) The Board shall issue a license as a "licensed professional counselor" to an applicant who meets all of the following criteria:

(1) Has met all of the requirements under subsection (b) of this section.

(2) Has completed a minimum of 3,000 hours of supervised professional practice as determined by the Board.

(d) A licensed professional counselor may apply to the Board for recognition as a "licensed professional counselor supervisor" and receive the credential "licensed professional counselor supervisor" upon meeting all of the following criteria:

(1) Has met all of the requirements under subsection (c) of this section.

(2) Has one of the following:

a. At least five years of full-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact;

b. At least eight years of part-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact; or

c. A combination of full-time and part-time professional counseling experience, including a minimum of 2,500 hours of direct client contact as determined by the Board.

(3) Has completed minimum education requirements in clinical supervision as approved by the Board.

(4) Has an active license in good standing as a licensed professional counselor approved by the Board."

SECTION 7. G.S. 90-338 reads as rewritten:

"**§ 90-338. Exemptions.**

Applicants holding certificates of registration as Registered Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of ~~G.S. 90-336(b).~~G.S. 90-336(c). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselor associates or licensed professional counselors and shall be licensed upon passing the Board examination and meeting the experience requirements:

(1) An applicant who was engaged in the practice of counseling before July 1, 1993, and who ~~applies~~ applied to the Board prior to January 1, 1996.

(2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

SECTION 8. G.S. 90-340 reads as rewritten:

"**§ 90-340. Protection of the public.**

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the license~~deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Article on one or more of the following grounds:

(1) ~~Conviction of a misdemeanor under this Article.~~Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.

(2) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling, or a misdemeanor charge reflecting the inability to practice professional counseling with due regard to the health and safety of clients or patients.

(3) ~~Gross unprofessional conduct, dishonest practice or incompetence in the practice of counseling.~~Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.

(4) ~~Procuring or attempting to procure a license by fraud, deceit, or misrepresentation.~~Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of professional counseling, the offer of professional counseling services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of professional counseling.

(5) ~~Any fraudulent or dishonest conduct in counseling.~~Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of professional counseling to the public, any individual, the Board, or any other organization.

(6) ~~Inability of the person to perform the functions for which a license has been issued due to impairment of mental or physical faculties.~~Has had a license or certification for the practice of professional counseling in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article.

(7) ~~Violations of any of the provisions of this Article or rules of the Board.~~Has violated any provision of this Article or any rules adopted by the Board.

(8) ~~Violations of the American Counseling Association Ethical Standards adopted by the Board.~~Has aided or abetted the unlawful practice of professional counseling by any person not licensed by the Board.

(9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Counseling Association. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

(10) Has practiced professional counseling in such a manner as to endanger the welfare of clients.

(11) Has demonstrated an inability to practice professional counseling with reasonable skill and safety by reason of illness, inebriation, misuse of drugs,

narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Has practiced professional counseling outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the licensed professional counselor associate, licensed professional counselor, or a third party.

(14) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.

(15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(17) Has a finding listed on the Division of Health Service Regulation of the Department of Health and Human Services Health Care Personnel Registry.

(b) The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of professional counseling deemed advisable by the Board.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.

(4) Require supervision of the professional counseling services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.

(5) Limit or circumscribe the practice of professional counseling provided by the applicant or licensee with respect to the extent, nature, or location of the professional counseling services provided, as deemed advisable by the Board.

(6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this section.

In addition, the Board may impose conditions of probation or restrictions on continued practice of professional counseling at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing professional counseling with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with

patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this

subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 9. G.S. 90-344 is repealed.

SECTION 10. Article 24 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-345. Criminal history record checks of applicants for licensure as professional counselors.**

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

(1) Applicant. – A person applying for licensure as a licensed professional counselor associate pursuant to G.S. 90-336(b) or licensed professional counselor pursuant to G.S. 90-336(c).

(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 licensure to practice professional counseling. 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 request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal

Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. 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 or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. 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 or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee 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 licensee. The applicant or licensee 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 licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant or licensee's criminal history record check."

SECTION 11. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.26. Criminal record checks of applicants for licensure as professional counselors.**

The Department of Justice may provide to the North Carolina Board of Licensed Professional Counselors from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 24 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 12. Licensed professional counselors who are approved by the North Carolina Board of Licensed Professional Counselors as qualified clinical supervisors before July 1, 2012, shall have until July 1, 2014, to meet the licensed professional counselor supervisor requirements of G.S. 90-336(d), as enacted in Section 6 of this act.

SECTION 13. This act becomes effective October 1, 2009.

HOUSE BILL 746:
Amend Professional Counselors Act/Fees

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 15, 2009
Introduced by:	Rep. Insko	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H746-CSRCf-38		

SUMMARY: House Bill 746 would amend the Licensed Professional Counselors Act and authorize the North Carolina Board of Licensed Professional Counselors to increase certain fees. The bill also authorizes the Department of Justice to charge a fee to offset the cost incurred in conducting a criminal record check for applicants for licensure or reinstatement of a license.

The PCS changes the effective date to October 1, 2009.

CURRENT LAW: Article 24 of Chapter 90 of the General Statutes is the Licensed Professional Counselors Act. This Act states that the public policy of the State is to regulate the activities of persons who provide counseling services to the public to insure protection of public health, safety, and welfare.

BILL ANALYSIS:

Section 1 would amend all of the following definitions in G.S. 90-330:

- the catch line of G.S. 90-330 to read *Definitions; practice of counseling*
- the term "counseling" to apply to offering assistance through the counseling relationship by evaluating and treating mental disorders and other conditions; and
- the term "supervisor" to include a licensed professional counselor supervisor (LPCS) and to provide that when a LPCS in unavailable that "supervisor" applies to a licensed professional counselor (LPC) or an equivalently and actively licensed mental health professional as determined by the NC Board of Licensed Professional Counselors (Board).

Would add definitions for the following terms:

- "licensed professional counselor associate"; and
- "licensed professional counselor supervisor".

Would provide that a person who is a LPC or a licensed professional counselor associate (LPCA) under the provisions of the Licensed Professional Counselors Act would not be permitted to identify themselves as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law.

Section 2 would make it unlawful for anyone who is not licensed under the Licensed Professional Counselors Act to engage in the practice of counseling or to use in any way the titles and acronyms Licensed Professional Counselor Associate, Licensed Professional Counselor, Licensed Professional Counselor Supervisor, LPC, LPCA, or LPCS to indicate or imply that the person is a licensed professional counselor.

Section 3 would amend the section of the Licensed Professional Counselors Act pertaining to exemptions from licensure by:

- Clarifying that any person counseling within the scope of employment at a private institution of higher education in addition to a public institution of higher education or a community college would be exempt; and
- Removing from the list of exemptions any person (i) counseling as a supervised counselor in a supervised professional practice for a specified period of time, (ii) performing counseling solely as an employee of an area facility that is operated by or under contract with mental health, developmental disabilities, and substance abuse authority if certain conditions apply, (iii) performing counseling as an employee of a licensed hospital or other health care facility who is performing this counseling under the supervision of a qualified professional, and (iv) any employee assistance professional providing core specific employee assistance program activities.

Section 4 would clarify that (i) any State or nationally recognized professional association representing professional counselors may make recommendations to the Governor for membership on the North Carolina Board of Licensed Professional Counselors (Board), and (ii) appointees to the Board would continue to serve until a successor is appointed and qualified.

Section 5 deletes the requirement that the Board expenditures may not exceed revenues during any fiscal year and raises the fees collected by the Board as follows:

- Raises fees for initial or renewal applications from "not to exceed $100" to "not to exceed $300".
- Raises late renewal fee from "not to exceed $25" to "not to exceed $150".

These fees were raised from $75 to $100 and $15 to $25, respectively, in 1993 (S.L. 1993-514). The license renewal fee is a biennial fee.

Section 6 would amend G.S. 90-336 by adding the qualifications for licensure for licensed professional counselor associate and licensed professional counselor supervisor and modifying licensure and qualifications for licensed professional counselor in terms of education requirements, exam requirements, hours of supervised professional practice, and hours of professional experience.

Section 7 provides for exemptions for applicants who are Registered Practicing Counselors and in good standing with the Board, and exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for certain individuals who meet specified experience requirements.

Section 8 would rewrite G.S. 90-340 to do all of the following:

Make substantial changes to the Board's authority to deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Act, and would provide detailed acts or omissions that would constitute grounds for the board to take action against a person licensed under this Act such as:

- Being convicted of a felony or entering a plea of guilty or nolo contendere to any felony charge under federal law or any state law;
- Being convicted of or entering a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling;
- Having engaged in fraud or deceit in securing or attempting to secure or renew a license;
- Having practiced professional counseling in such a manner as to endanger the welfare of clients;
- Having harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.

- Refusing to appear before the Board after having been ordered to do so in writing by the chair; and
- Having violated any provision of this Act or any rules adopted by the Board.

Provide additional disciplinary action that the Board may take in lieu of denial, suspension, or revocation including issuing a formal reprimand, placing an applicant on probation, and requiring supervision of the professional counseling services provided by the applicant or licensee;

Authorize the Board to assess the costs of disciplinary action against an applicant or licensee and to petition a court of competent jurisdiction to order an applicant or licensee whose physical or mental competence is in question to submit to a psychological or physical evaluation or both;

Require the Board to provide the opportunity for a hearing under specified circumstances;

Provide guidelines regarding a hearing;

Provide that information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records. However, any notice or statement of charges against any applicant or licensee or any notice to a licensee or applicant of a hearing in any proceeding or any decision made in connection with a hearing in any proceeding is a public record;

Allow a person whose license has been denied or revoked to reapply to the Board for licensure after one calendar year from the date of the denial or revocation;

Allow a licensee to voluntarily relinquish his or her license at any time; and

Authorize the Board to adopt rules deemed necessary to interpret and implement this section.

Section 9 would repeal the section of the Licensed Professional Counselors Act regarding third-party reimbursements.[1]

Section 10 would set out the definitions and procedure providing for criminal history record checks for applicants for licensure as professional counselors. The Board would have limited immunity from civil liability provided the Board acted in good faith and in compliance with this section.

Section 11 authorizes the Department of Justice to provide the criminal history of any applicant for licensure or reinstatement of a license under the Act and to charge a fee to offset the cost incurred in conducting the criminal record check.

Section 12 would allow licensed professional counselors who are approved by the Board as qualified clinical supervisors before July 1, 2012 to have until July 1, 2014 to meet the new licensed professional counselor supervisor requirements.

EFFECTIVE DATE: The act would become effective October 1, 2009.

Shirley Iorio, Ph D, legislative analyst to House State Government/State Personnel, and Martha Walston, Counsel to House Finance Committee, substantially contributed to this summary.

H746-SMRC-52(CSRCf-38) v1

[1] This section provided that nothing in the Article shall be construed to require direct third-party reimbursement to persons licensed under the Article.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 746 DATE 6/16/09

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Sen.) Rand

1 moves to amend the bill on page _____, line _____

2 ( ) WHICH CHANGES THE TITLE

3 by deleting line 5, pg 10,

4

5 and renumbering remaining

6

7 sections.

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SIGNED Tim Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 749
Committee Substitute Favorable 4/21/09

Short Title: Use of Cisterns in Construction/Renovation. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BUILDING CODE TO PERMIT THE USE OF CISTERNS TO PROVIDE WATER FOR FLUSHING TOILETS AND FOR OUTDOOR IRRIGATION IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS OR STRUCTURES AND TO PROHIBIT ANY STATE, COUNTY, OR LOCAL BUILDING CODE OR REGULATION FROM PROHIBITING THE USE OF CISTERNS FOR THESE USES.

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, 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.

The Code may include rules pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. No State, county, or local building code or regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. As used in this subsection, 'cistern' means a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands."

SECTION 2. This act is effective when it becomes law and applies to any cistern, as defined in G.S. 143-138, as amended by Section 1 of this act, installed on or after that date that is used to provide water for flushing toilets or for outdoor irrigation.

HOUSE BILL 749:
Use of Cisterns in Construction/Renovation

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 16, 2009
Introduced by:	Rep. K. Alexander	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 749 would authorize the State Building Code Council to permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation in the construction or renovation of residential or commercial buildings or structures and prohibit any State, county, or local building code or regulation from banning the use of cisterns for these purposes.

CURRENT LAW: S.L. 2008-143 amended Article 38 of Chapter 143 of the General Statutes to provide that it is the State policy that the reuse of treated wastewater or **reclaimed water** is a critical component of meeting the existing and future water supply needs of the State. The General Assembly also directed the Environmental Management Commission to adopt rules to

"(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.[1]"

BILL ANALYSIS: House Bill 749 would amend G.S. 143-138(b) to authorize the State Building Code Council to include rules in the Code pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and outdoor irrigation. House Bill 749 would also prohibit any State, county, or local building code or regulation from banning the use of cisterns to provide for the items listed above.

House Bill 749 defines a cistern as a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands.

EFFECTIVE DATE: This act is effective when it becomes law and applies to any cistern installed on or after that date that is used to provide water for flushing toilets or for outdoor irrigation.

Mariah Matheson, Research Assistant to House Water Resources and Infrastructure, substantially contributed to this summary.

H749-SMSU-110(e2) v1

[1] G.S. 143-355.5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1034
Committee Substitute Favorable 4/23/09

Short Title: Allow Recorded Phone Messages/Public Safety. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AUTOMATIC DIALING AND RECORDED MESSAGE PLAYERS TO BE USED TO MAKE UNSOLICITED TELEPHONE CALLS TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-104(b) is amended by adding a new subdivision to read:

"(7) The purpose of the unsolicited telephone call is to protect the public health, safety, or welfare by informing the telephone subscriber of any of the following:

a. That the telephone subscriber has purchased a product that may be subject to a recall due to safety concerns.

b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall due to safety concerns.

c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21.

d. That an account maintained by the telephone subscriber may be subject to potential fraudulent activity.

A call made pursuant to this subdivision shall be limited to the above-stated purpose and shall not in any way be used for commercial purposes."

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

HOUSE BILL 1034:
Allow Recorded Phone Messages/Public Safety

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 16, 2009
Introduced by:	Reps. Glazier, Barnhart, England	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1034 would permit the use of automatic dialing and recorded message players to make unsolicited telephone calls to protect the public health, safety or welfare.***

CURRENT LAW:

Under current law, G.S. 75-104(a) prohibits the use of automatic dialing and recorded message players to make unsolicited telephone calls, subject to certain exceptions set forth in G.S. 75-104(b).[1]

BILL ANALYSIS:

House Bill 1034 would permit the use of automatic dialing and recorded message players to make unsolicited telephone calls where the purpose of the call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:

- A product the subscriber has purchased may be subject to a safety recall;
- The subscriber may have purchased a prescription or over-the-counter medication that is subject to a safety recall;
- The subscriber has not picked up a filled prescription drug for a valid prescription on file with a licensed pharmacy; or
- The subscriber has an account that may be subject to potential fraudulent activity.

The bill also provides that a call made under this exception must be limited to the stated purpose and may not be used for commercial purposes.

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

[1] G.S. 75-104(b) currently permits the use of automatic dialing and recorded message players to make unsolicited calls where:

(1) All of the following are satisfied:
  a. The person making the call is any of the following:
    1. A tax-exempt charitable or civic organization.
    2. A political party or political candidate.
    3. A governmental official.

4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to make a telephone solicitation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

(6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits.

Bill Patterson and Karen Cochrane-Brown substantially contributed to this summary.

H1034-SMSU-111(e2) v1

HOUSE BILL 1035

Short Title:	UNC Performance & Payment Bond Modification.	(Public)
Sponsors:	Representatives Glazier, Goforth, McLawhorn, Yongue (Primary Sponsors); Harrison, Insko, Lucas, and Parmon.	
Referred to:	State Government/State Personnel, if favorable, Appropriations.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERFORMANCE AND PAYMENT BONDING REQUIREMENT FOR CONSTRUCTION PROJECT CONTRACTS AWARDED BY THE UNIVERSITY OF NORTH CAROLINA THAT EXCEED FIVE HUNDRED THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-26 reads as rewritten:

"**§ 44A-26. Bonds required.**

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars ($300,000), 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).~~($50,000); provided that, for The University of North Carolina and its constituent institutions, a performance and payment bond is required in accordance with this subsection if the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars ($500,000). 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.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract."

SECTION 2. This act becomes effective July 1, 2009, and applies to construction contracts awarded on or after that date.

2009-2010 General Assembly

HOUSE BILL 1035: UNC Performance & Payment Bond Modification

Committee:	Senate Commerce	**Date:**	June 15, 2009
Introduced by:	Reps. Glazier, Goforth, McLawhorn, Yongue	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1035 increases the threshold that triggers performance and payment bonding requirements for construction project contracts awarded by The University of North Carolina.***

CURRENT LAW: G.S. 44A-26 provides that a when the total construction contracts awarded for one project by a State agency or a political subdivision of the State exceeds $300,000, the contractor or construction manager at risk must provide either a performance bond or a payment bond for 100% of the construction contract amount.

BILL ANALYSIS: House Bill 1035 would increase the threshold for when a performance or payment bond is required on construction contracts let by The University of North Carolina. The threshold would be increased from $300,000 to $500,000. All other requirements related to the bonds would apply.

EFFECTIVE DATE: The act would become effective July 1, 2009 and apply to construction contracts awarded on or after that date.

H1035-SMRC-50(e1) v2

SENATE COMMERCE COMMITTEE
Tuesday, June 23, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 23, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator Clark Jenkins opened the meeting with Senator R.C. Soles presiding over the remainder of the meeting.

Impact of Golf on the North Carolina Economy.

Brian Powell, board member of the Carolina's Golf Course Superintendents Association, was recognized for a presentation on the revenue generated by the golf industry. A copy of his power point is attached.

H.B. 98 – License Renewal/Active Military Duty.

Representative Killian was recognized to explain the bill. Senator Rucho moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS authorizes a member of the Armed Forces or of reserve components of the Armed Forces to renew a drivers license upon receipt of deployment orders and allows a sixty-day grace period for an expired license upon release from active duty. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1093 – Housing Authorities/Moderate Income Persons.

Representative Tarleton was recognized to explain the bill. It authorizes certain housing authorities to provide housing for moderate-income persons. Senator Goss moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1409 – Building Code Exclusion/Certain Wiring.

Senator Apodaca was recognized to explain the bill and moved to adopt PCS for discussion. The motion carried. The PCS exempts certain electrical lighting devices and fixtures and water heater replacement in residences from building permit requirements. Senator Apodaca offered an amendment to exempt gas heater requirements from the bill and moved for its adoption. The motion carried. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS, the amendment and the summary is attached.

H.B. 1410 – Building Code Exclusion/Hot Water Heaters.

Representative Justice and Senator Boseman were recognized to explain the bill and answer questions. Senator Boseman moved to adopt the PCS for discussion and the motion carried. The PCS clarifies that for purposes of the State Environmental Policy Act, expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an

economic incentive agreement. Jeff Hudson, a staff attorney with the Research Division, was recognized to answer questions. Senator Hoyle moved to delay the vote on the bill until information regarding the bill could be received for the Department of Commerce and the Governor's office. The motion carried. A copy of the PCS and the summary is attached.

H.B. 309 – Internet Ticket Protection Resale Sunset.

Representative Glazier was recognized to explain the bill which removes the sunset on an act to protect customers purchasing tickets via the internet. Senator Goss moved for a favorable report and the motion carried.

The meeting adjourned at 12:01 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Senate Commerce Committee
Tuesday, June 23, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Impact of Golf on the NC Economy

- Chris Valauri, Carolina's Golf Course Superintendents Lobbyist
- Brian Powell, Carolina's Golf Course Superintendents Association Board of Directors

Bills

HB 98	License Renewal/Active Military Duty	Rep. Sager Rep. Dollar Rep. Burris-Floyd Rep. Killian
HB 309	Internet Ticket Protection Resale Sunset.	Rep. Gibson Rep. Glazier Rep. Tillis Rep. Harrell
HB 1034	Allow Recorded Phone Messages/Public Safety.	Rep. England, M.D. Rep. Barnhart Rep. Glazier
HB 1093	Housing Authorities/Moderate-Income Persons.	Rep. Tarleton
HB 1409	Building Code Exclusion/Certain Wiring.	Rep. Justice Rep. Gibson Rep. Grady Rep. Owens
HB 1410	Building Code Exclusion/Hot Water Heaters.	Rep. Justice Rep. Justus Rep. Johnson Rep. Brisson
HB 1478	Design Professional Seals/Public Records.	Rep. Tillis

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 23, 2009

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

FAVORABLE

H.B. **309** Internet Ticket Protection Resalé Sunset.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1093** Housing Authorities/Moderate-Income Persons.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **98** License Renewal/Active Military Duty
Draft Number: 11006
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 23, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1409** Building Code Exclusion/Certain Wiring.

Draft Number:	50746
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Matt Randell	TPG

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Larry Beverly	GIC
Fred Bone	Bone & Assn.
Jayne Swing Kim	NC Propane Gas Assoc.
Kemp C Johnson	NC Propane Gas Assoc.
DARRIN PARKER	NC PROPANE GAS ASSOC.
DAVID BRILES	NC PROPANE GAS ASSOCIATION
David Parryear	City of Raleigh Inspections
Paul Sandy	City of Raleigh Inspections
Jeffrey C. Voss	NC PHCC
JEFF FORLOW	NC PHCC
Henry Hutaff	N.C.B.A.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
George Suddath	PBV
David Crawford	AIANC
Dana Simpson	Smith Anderson
Howard Petrea	The First Tee of Brunswick Cty
Joey Bartholomew	The First Tee of Brunswick Cty.
Jack Nance	Carolinas Golf Association
Lindsay Clifton	Governors Office
[illegible]	NCRMT
Bill Scoggin	KLG
David Bray	MWC
Gregory Thompson	NFIB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 23, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Edna Dash	UNC Charlotte
Steve Metcalf	Town of Boone
Emily Wilbourne	Town of Boone
Steve Wall	DENR
Chris Hills	K&L Gates
Jon Carr	PHCE

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 23, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Fred Baggett	Smith Moore Leatherwood
Dan Conrad	NCCN
Amy McCaskey	Smith Anderson
Robin Smith	DENR
Andy Ellen	NCRMA
[signature]	NC Chamber
Allison Waller	Charlotte Chamber
Emily Gallemore	NCBA
Mike Giles	NC Coastal Federation
Michelle Nowlin	Duke Environmental Law & Policy Clinic
Christopher Speedie	Duke Environmental Law + Policy Clinic

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

June 23, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Monaghan	Piedmont Natural Gas Co.
Robbie Brooks	NC BEEC
Chris Niles	OSFM/DOI
Reed Fountain	YMH - Raleigh, NC
Dale Dawson	SBEPHFSC. Raleigh
Debra DeCarlo	UNC 10G
TRAY BRINN	NC. PROPANE GAS ASSO.
HAROLD VAN DERVEER	NC PROPANE GAS ASSN.
Felton Crews	NC Propane Gas Assn
Hal Johnson	NC Propane Gas Assn.

NORTH CAROLINA GOLF

Economically Vital
Environmentally Responsible
Socially Beneficial

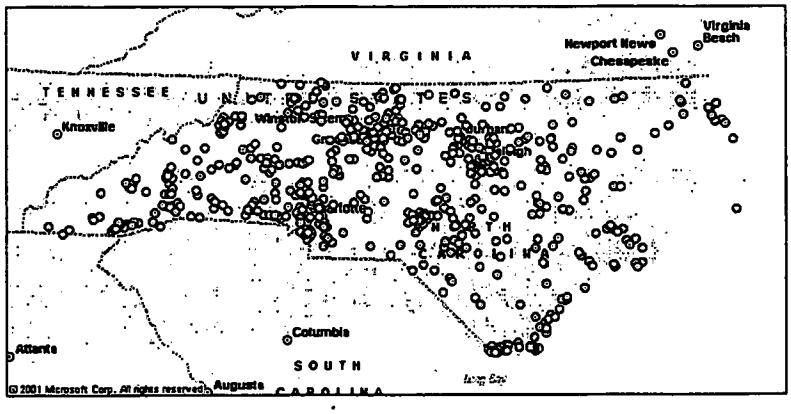
North Carolina Alliance for Golf

CAROLINAS SECTION

North Carolina Chapter

NORTH CAROLINA GOLF MARKETING ALLIANCE

North Carolina Golf Facilities



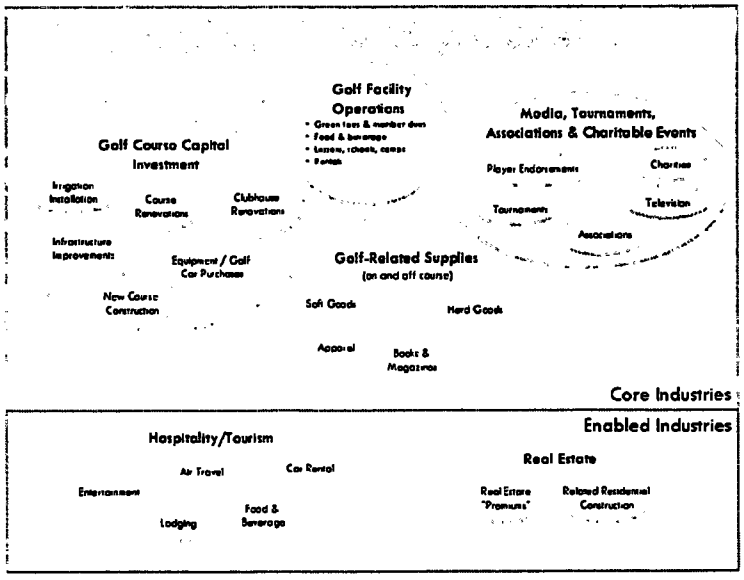
Why an Economic Impact Study?

- 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

H D

HOUSE BILL 98
Committee Substitute Favorable 3/5/09
Committee Substitute #2 Favorable 3/19/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H98-CSSU-63 [v.1]

6/9/2009 2:59:54 PM

Short Title: License Renewal/Active Military Duty. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF RESERVE COMPONENTS OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS AND TO ALLOW A SIXTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

b. A person who is a member of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 60 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law. Notwithstanding the provisions of this sub-subdivision, no license shall be considered valid more than 18 months after the date of expiration.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty ~~in the armed forces of the United States~~ and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

(1) A member of the ~~armed forces~~ Armed Forces of the United States.

(2) A member of ~~the national guard or of~~ a reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

HOUSE BILL 98:
License Renewal/Active Military Duty

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 23, 2009
Introduced by:	Reps. Killian, Sager, Dollar, Burris-Floyd	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Third Edition H98-CSSU-63		

SUMMARY: ***The Proposed Committee Substitute for House Bill 98 would modify drivers license renewal provisions for members of the Armed Forces and reserve components of the Armed Forces who are on active duty in the following three ways:***

- ***Allow those members to renew a license upon receipt of deployment orders, even if it is outside of the generally applicable renewal period of 180 days before expiration.***
- ***Extend the validity of a drivers license that expired while a member of a reserve component of the Armed Forces was on active duty outside the State.***
- ***Allow an active duty reserve member stationed outside the State to renew a drivers license by mail. (Currently allowed for members of Armed Forces on active duty.)***

CURRENT LAW: G.S. 90-7(f)(3a) allows a person to apply to the Division of Motor Vehicles to renew a drivers license during the 180-day period before the license expires and prohibits the Division from accepting renewal applications before that period.

BILL ANALYSIS: House Bill 98 would amend existing motor vehicle law as follows:

Section 1 – Would add a new definition in Chapter 20 (Motor Vehicles) of the General Statutes, defining "Reserve components of the Armed Forces of the United States" and specifying that the definition includes the Army and Air National Guard.

Section 2 – Would add a new subdivision to G.S. 20-7(f) (Duration and Renewal of Licenses) to:

- Allow the Division of Motor Vehicles to renew the drivers license of a member of the Armed Forces or of a reserve component of the Armed Forces with orders placing the member on active duty outside of the State, regardless of the date of expiration of the license.
- Classify as valid a drivers license that expired while a member of a reserve component of the Armed Forces was on active duty outside the State. The license would continue to be valid until 60 days after the date of release from active duty. The PCS makes clear that no license would be valid for more than 18 months after its expiration.

The bill would further amend G.S. 20-7(f) to allow reservists on active duty stationed outside of the State to renew their drivers license by mail, as is currently the case for active duty armed forces.

Sections 3 and 4 – Would capitalize the term Armed Forces wherever it occurs throughout Chapter 20 of the General Statutes.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to all licenses expiring on or after its effective date.

Ben Popkin, counsel to House Homeland Security, Military, and Veterans Affairs, contributed to this summary.

H98-SMSU-115(CSSU-63) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1093
Committee Substitute Favorable 4/29/09

Short Title: Housing Authorities/Moderate-Income Persons. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN HOUSING AUTHORITIES TO PROVIDE HOUSING FOR MODERATE-INCOME PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 157-9.1 is amended by adding a new subsection to read as follows:

"(e) Notwithstanding the provisions of subsections (b), (c), and (d) of this section, subsection (a) of this section applies to the housing authorities of all cities that have a population of less than 20,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students and applies to the housing authorities of all counties that have a population of less than 80,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students."

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

HOUSE BILL 1093:
Housing Authorities/Moderate-Income Persons

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 23, 2009
Introduced by:	Rep. Tarleton	**Prepared by:**	Wendy Graf Ray *
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1093 would authorize certain housing authorities to provide housing assistance for moderate income persons.***

CURRENT LAW: Currently, housing authorities may provide housing for persons of *low income.* The statute provides the following definitions:

- **Persons of low income** means persons in households the annual income of which, adjusted for family size, is not more than sixty percent (60%) of the local area median family income as defined by the most recent figures published by HUD.
- **Persons of moderate income** means persons deemed by the authority to require the assistance made available pursuant to this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the person's family, (iii) the cost and condition of housing facilities available, and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis.

BILL ANALYSIS: G.S. 157-9.1(a) provides that wherever the words "low income" appear in the Chapter dealing with housing authorities, that phrase will mean "low and moderate income." House Bill 1093 provides that this applies to:

- Housing authorities of all cities that have a population of less than 20,000 and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students.
- Housing authorities of all counties that have a population of less than 80,000 and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students.

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

BACKGROUND: House Bill 1093 was designed to assist persons of moderate income obtain housing in Boone and Watauga County. However, a local bill would have raised constitutional concerns. Article II, Section 24 of the North Carolina Constitution prohibits local bills relating to health, sanitation, or the abatement of nuisances. The Housing Authorities Law is related to sanitation and health. In fact, it is specifically designed to address *sanitary* housing in North Carolina and to promote the *health* and welfare of citizens (G.S. 157-2). The Second Edition of House Bill 1093, however, does comply with the North Carolina Constitution because (1) it is a public bill, not a local bill, and (2) it contains reasonable classifications of populations and other criteria that are subject to change.

Bill Gilkeson and Brad Krehely contributed substantially to the drafting of this summary.

H1093-SMSU-120(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1409
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1409-CSRO-62 [v.2]

6/22/2009 4:39:01 PM

Short Title: Building Code Exclusion/Certain Wiring. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN ELECTRICAL LIGHTING DEVICES AND FIXTURES AND WATER HEATER REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS.

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 electrical lighting devices and fixtures of the same type), ~~appliances,~~ appliances (excluding replacement of water heaters, provided that the energy use rate or thermal input is not greater than that of the water heater which is being replaced, and there is no change in fuel, energy source, location, capacity, type, or routing or sizing of venting and piping), 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. The exclusions from building permit requirements set forth in this paragraph for electrical lighting devices and fixtures, and water heaters shall apply only to work performed on a one- or two-family dwelling. In addition, exclusions for electrical lighting devices and fixtures and electric water heaters shall apply only to work performed by a person licensed under G.S. 87-43 and exclusions for water heaters, generally, to work performed by a person licensed under G.S. 87-21.

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 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 work is performed by a person licensed under G.S. 87-21, the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel,

energy source, location, capacity, type, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(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 lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same capacity and electrical rating as the original.

b. With respect to electrical lighting 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 repair or replacement installation meets the current edition of the State Building Code including the State Electrical Code.

~~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 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 work is performed by a person licensed under G.S. 87-21, the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, type, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(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 lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same capacity and electrical rating as the original.

b. With respect to electrical lighting 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 repair or replacement installation meets the current edition of the State Building Code including the State Electrical Code.

~~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:	Senate Commerce	**Date:**	June 10, 2009
Introduced by:	Reps. Justice, Grady, Owens, Gibson	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Third Edition H1409-CSRG-37		

SUMMARY: ***House Bill 1409 amends the law governing the State Building Code to exempt certain simple wiring activities and electric water heater 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.***

The PCS adds a similar exemption from the permitting requirements for water heaters generally, if the work is performed by a licensed plumber. (This provision is contained in House Bill 1410 which has been combined with this bill).

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 type, and replacement of electric water heaters with the same electrical rating. The exclusions apply only to work performed on a one- or two-family dwelling by a licensed electrician. The same exclusion applies to the replacement of water heaters generally as long as the work is performed by a licensed plumber.

Section 2 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 capacity as the original, and is installed in accordance with the current edition of the State Building Code.

This section 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 electric water heater that is being replaced, if the following conditions are met:

- The replacement electric water heater 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 repair or replacement meets the current edition of the State Building Code including the State Electrical Code.

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-120(CSRG-37) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1409 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE A1409-CSRO-62

~~Rep.~~)
) Apodaca
Sen.)

moves to amend the bill on page 2, line 31

( ) WHICH CHANGES THE TITLE

by inserting the word "electric" between the words "of" and "water" and by deleting the words "or thermal input";

on page 2, lines 32-33, by deleting the words "fuel energy source," and the words "venting and";

and on page 2, lines 39-41, by rewriting the lines to read:

"heaters shall apply only to work performed by a person licensed under G.S. 87-43.";

and on page 3, lines 48 through page 4, line 1, by rewriting the lines to read:

"required for the connection of existing water piping to an electric water heater that is being replaced provided that the energy use rate is not greater than that.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1410
Committee Substitute Favorable 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1410-CSSB-50 [v.1]

6/10/2009 4:53:12 PM

Short Title: Clarify SEPA Applicability. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT FOR PURPOSES OF THE STATE ENVIRONMENTAL POLICY ACT, EXPENDITURE OF PUBLIC MONEYS INCLUDES PUBLIC MONEYS PAID OR TO BE PAID, WHETHER CONDITIONAL OR NOT, PURSUANT TO AN ECONOMIC INCENTIVE AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-4 reads as rewritten:

"**§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this ~~Article; and~~Article.

(2) Every State agency shall include in every recommendation or report on any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible ~~official~~ agency official. For purposes of this section, "expenditure of public moneys" includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement. The detailed statement shall ~~setting forth the following:~~set forth all of the following:

a. The environmental impact of the proposed ~~action;~~action.

b. Any significant adverse environmental effects ~~which~~ that cannot be avoided should the proposal be ~~implemented;~~implemented

c. Mitigation measures proposed to minimize the ~~impact;~~impact.

d. Alternatives to the proposed ~~action;~~action.

e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term ~~productivity; and~~productivity.

f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

(2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved.

Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the School of Government at the University of North Carolina at Chapel Hill."

SECTION 2. This act is effective when it becomes law and applies to any economic incentive agreement entered into on or after January 1, 2008.

HOUSE BILL 1410:
Clarify SEPA Applicability.

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 16, 2009
Introduced by:	Reps. Justice, Johnson, Justus, Brisson	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to Second Edition H1410-CSSB-50		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1410 would clarify that for purposes of the State Environmental Policy Act (SEPA), expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement.***

The PCS would be effective when it became law and apply to any economic incentive agreement entered into on or after January 1, 2008.

CURRENT LAW: SEPA requires preparation of an environmental document for every action involving **expenditure of public moneys** or use of public land for projects significantly affecting the quality of the environment in this State. The environmental document prepared must cover all of the following:

- The environmental impact of the proposed action.
- Any significant adverse environmental effects which cannot be avoided should the proposal be implemented.
- Mitigation measures proposed to minimize the impact.
- Alternatives to the proposed action.
- The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity.
- Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

BILL ANALYSIS: The PCS for House Bill 1410 would clarify that for purposes of SEPA, expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement.

EFFECTIVE DATE: The PCS would be effective when it became law and apply to any economic incentive agreement entered into on or after January 1, 2008.

H1410-SMRI-64(CSSB-50) v1

HOUSE BILL 309

Short Title:	Internet Ticket Protection Resale Sunset.	(Public)
Sponsors:	Representatives Glazier, Gibson, Tillis, Harrell (Primary Sponsors); K. Alexander, Allred, Faison, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2008-158 reads as rewritten:

"**SECTION 4.** This act becomes effective August 1, 2008. ~~2008, and expires June 30, 2009. The expiration of this act does not relieve a person's liability to file the report required under G.S. 14-344.1(e) for gross receipts received in June 2009. Liability for acts or omissions before the expiration date of this act are not abated or affected by the expiration.~~ Section 3 of this act applies to offenses committed on or after that date."

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

HOUSE BILL 309:
Internet Ticket Protection Resale Sunset

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 22, 2009
Introduced by:	Reps. Glazier, Gibson, Tillis, Harrell	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 309 removes the sunset on an act to protect customers purchasing tickets via the internet.

CURRENT LAW:

In 2008, the General Assembly enacted a law allowing admission tickets to be resold on the Internet at a price greater than the price printed on the face of the ticket. The act provides the following protections to the purchaser and to the venue:

- It requires a person who resells admission tickets online to provide a ticket guarantee that must be conspicuously displayed on the person's Website. A prospective purchaser must be directed to the ticket guarantee before completion of a resale transaction.
- The ticket guarantee must provide a purchaser with a full refund of the amount paid for the ticket if the event is cancelled, the purchaser is denied admission through no fault of the purchaser, or the ticket is not delivered to the purchaser and the failure to receive the ticket results in the purchaser's inability to attend the event. For a cancelled event, the seller may withhold handling and delivery fees from a refunded amount if the Website informs the purchaser of this policy.
- A venue may prohibit a person from reselling tickets at a price greater than the price on the face of ticket to an event it sponsors if it posts notice of the prohibition on its Website, on the Website of the primary ticket seller, and files a notice of the prohibition with the Secretary of State. A prohibition may not become valid until 30 days after the notice is posted on the venue's Website. The prohibition expires on December 31 of each year unless the venue renews its prohibition.

The act does not apply to student tickets issued by institutions of higher education in the State for sporting events. Persons who resell tickets must report to the Department of Revenue on a monthly basis.

The act also makes it an unfair and deceptive trade practice for a person to knowingly sell, give, transfer, use, distribute, or possess software that is primarily designed or produced for the purpose of interfering with the operation of a ticket seller who, pursuant to a written agreement with the venue, sells admission tickets over the Internet. The act became effective August 1, 2008, and is set to expire on June 30, 2009.

BILL ANALYSIS: House Bill 309 removes the June 30, 2009, sunset.

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

Drupti Chauhan, substantially contributed to this summary.

H309-SMRO-127(e1) v1

SENATE COMMERCE COMMITTEE
Tuesday, June 30, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 30, 2009, in Room 1027 of the Legislative Building. Twenty-five members of the committee were present. Senator R.C. Soles presided. Shaquila Jones of Maysville, Nia Matherson of Greensboro, Michael Rhodes and Jamar Barnes of Goldsboro, Emma Curtis of Clyde, Robby Rucho of Matthews, Scott Stewart of West End, Kathleen Reittinger of Greensboro, Herman Fernandez of Fayetteville and Ian Whitson of Snow Hill served as pages.

H.B. 877 – Repeal UI Disqual. For Trailing Spouses.

Representative Wainwright was recognized to explain the bill. The bill provides that an individual will not be denied unemployment compensation solely because the individual is seeking only part-time work; removes disqualifying conditions related to separating from work for compelling family reasons including domestic violence, illness, or disability; and repeals 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 makes those benefits nonchargeable to the employer. David Clegg, the NC Employment Security Commission deputy director, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1090 – UI/Severance Modifications.

Representative Wainwright was recognized to explain the bill. Senator Rand moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the definition of total and partial unemployment relating to the treatment of severance pay under the Employment Security Laws of North Carolina. Senator Dorsett offered an amendment to change the effective date and moved for its adoption. The motion carried. Due to several questions that Mr. Clegg needed to research before answering, the bill was displaced. A copy of the PCS, the amendment, and the summary is attached.

H.B. 882 – Motor Vehicle Inspection Program Changes.

Representative Cole was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS allows the Division of Motor Vehicles to refuse to register a vehicle if the vehicle is not in compliance with the inspections requirements; requires proof of financial responsibility for a three-day trip permit; and makes technical changes to the inspection program statutes. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 291 – Hair Braider Licensure/Cosmetic Art Act.

Representative Parmon was recognized to explain the bill. Senator Garrou moved to adopt the PCS for discussion and the motion carried. The PCS amends the Cosmetic Art Act to provide for licensure of persons engaging in the practice of natural hair braiding. Senator Garrou moved

for a favorable report and the motion carried. A copy of the PCS, the fiscal note, and the summary is attached.

H.B. 1595 – Malt Beverage Special Permit.

Representative Tillis and Representative Ross were recognized to explain the bill. Senator McKissick offered an amendment which reduces the number of samples from six to four and regulates the payment of the samples' excise tax. He moved to adopt the amendment and the motion carried. The Reverend Mark Creech, director of the Christian Action League, was recognized to oppose the bill. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 1410 – Building Code Exclusion/Hot Water Heaters.

Representative Justice was recognized to explain the PCS which had been approved for discussion at the previous meeting. The PCS clarifies that for purposes of the State Environmental Policy Act, expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement. Representative Justice provided a handout outlining the preparation of SEPA documents. She requested that the bill be removed from the agenda. A copy of the PCS, the summary, the SEPA handout and a position statement from the Department of Commerce is attached.

H.B. 1034 – Allow Recorded Phone Messages/Public Safety.

Representative Glazier was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS allows automatic dialing and recorded message players to be used to make unsolicited telephone calls to protect the public health, safety, or welfare. Senator Blue moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1287 – Recycle Products Containing Mercury.

Representative Harrison was recognized to explain the bill which requires all public agencies to recycle all spent fluorescent lights and mercury thermostats; requires the removal of all fluorescent lights and mercury thermostats from buildings prior to demolition; and bans mercury-containing products from unlined landfills. Scott Mouw, section chief of the Division of Pollution Prevention and Environmental Assistance, Department of Environment and Natural Resources, was recognized to answer questions. Senator McKissick moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1478 – Design Professional Seals/Public Records.

Representative Tillis was recognized to explain the bill which protects the seal of a licensed design profession in building inspection documents. Senator Rucho offered a technical amendment to change the effective date of the bill and moved for its adoption. The motion carried. Senator Hunt moved for a favorable report and the motion carried. A copy of the bill, the summary and the amendment is attached.

H.B. 1485 – Insurance/Health Care Provider Relationship.

Representative Neumann and Representative Barnhart were recognized to explain the bill which reforms the process for recovery of overpayments to providers by insurers. Senator Blue offered a technical amendment that changed a date and moved for its adoption. The motion carried. Mark Trogden, an analyst from the Fiscal Research Division, was recognized to explain the bill and answer questions. Due to the time, the further discussion of the bill was extended to a future meeting. A copy of the bill, the summary, the fiscal memo, the amendment and a handout from Aon is attached.

The meeting adjourned at 12:02 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 30, 2009

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

FAVORABLE

H.B.(CS #1) **877** Repeal UI Disqual. For Trailing Spouses.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1287** Recycle Products Containing Mercury.
Sequential Referral: None
Recommended Referral: None

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

H.B. **1478** Design Professional Seals/Public Records.
Draft Number: 30402
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **291** Hair Braider Licensure/Cosmetic Art Act.
Draft Number: 30421
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **882** Motor Vehicle Inspection Program Changes.
Draft Number: 30419
Sequential Referral: None
Recommended Referral: None

Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1034** Allow Recorded Phone Messages/Public Safety.
Draft Number: 50752
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comments:
H291 – Sen. Garrou
H877 – Sen. Nesbitt
H882 – Sen. Jenkins
H1034 – Sen. Stein
H1287 - ?
H1478 – Sen. Rucho

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 01, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1595** Malt Beverage Special Permit.

Draft Number:	80482
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 30, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 291	Hair Braider Licensure/Cosmetic Art Act.	Representative Parmon Representative Womble
HB 877	Repeal UI Disqual. For Trailing Spouses.	Representative Wainwright
HB 882	Motor Vehicle Inspection Program Changes.	Representative Cole
HB 996	Repeal ACH/Public Housing Study.	Representative Farmer-Butterfield Representative Tolson
HB 1034	Allow Recorded Phone Messages/Public Safety.	Representative England, M.D. Representative Barnhart Representative Glazier
HB 1035	UNC Performance & Payment Bond Modification.	Representative Goforth Representative Yongue Representative McLawhorn Representative Glazier
HB 1090	UI/Severance Modifications.	Representative Wainwright
HB 1287	Recycle Products Containing Mercury.	Representative Burris-Floyd Representative Harrison
HB 1387	Solar Collectors on Residential Properties.	Representative Harrison Representative Fisher

HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Justus Representative Johnson Representative Brisson
HB 1478	Design Professional Seals/Public Records.	Representative Tillis
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart
HB 1595	Malt Beverage Special Permit.	Representative Ross Representative Tillis
SB 32	Employers Must Use Federal E-Verify Program.	Senator Snow

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: S829 - Regulation of Appraisal Management Companies has been added to the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
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HB 1034	Allow Recorded Phone Messages/Public Safety.	Representative England, M.D. Representative Barnhart Representative Glazier
HB 1035	UNC Performance & Payment Bond Modification.	Representative Goforth Representative Yongue Representative McLawhorn Representative Glazier
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HB 1287	Recycle Products Containing Mercury.	Representative Burris-Floyd Representative Harrison
HB 1387	Solar Collectors on Residential Properties.	Representative Harrison Representative Fisher

HB 1410	Building Code Exclusion/Hot Water Heaters.	Representative Justice Representative Justus Representative Johnson Representative Brisson
HB 1478	Design Professional Seals/Public Records.	Representative Tillis
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart
HB 1595	Malt Beverage Special Permit.	Representative Ross Representative Tillis
SB 32	Employers Must Use Federal E-Verify Program.	Senator Snow
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, June 30, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 291	Hair Braider Licensure/Cosmetic Art Act.	Rep. Parmon Rep. Womble
HB 877	Repeal UI Disqual. For Trailing Spouses.	Rep. Wainwright
HB 882	Motor Vehicle Inspection Program Changes.	Rep. Cole
HB 996	Repeal ACH/Public Housing Study.	Rep. Farmer-Butterfield Rep. Tolson
HB 1034	Allow Recorded Phone Messages/Public Safety.	Rep. England Rep. Barnhart Rep. Glazier
HB 1090	UI/Severance Modifications.	Rep. Wainwright
HB 1287	Recycle Products Containing Mercury.	Rep. Burris-Floyd Rep. Harrison
HB 1387	Solar Collectors on Residential Properties.	Rep. Harrison Rep. Fisher
HB 1410	Building Code Exclusion/Hot Water Heaters.	Rep. Justice Rep. Justus Rep. Johnson Rep. Brisson
HB 1478	Design Professional Seals/Public Records.	Rep. Tillis
HB 1485	Insurance/Health Care Provider Relationship.	Rep. England Rep. Neumann Rep. Steen Rep. Barnhart
HB 1595	Malt Beverage Special Permit.	Rep. Ross Rep. Tillis

SB 32	Employers Must Use Federal E-Verify Program.	Sen. Snow
SB 829	Regulation of Appraisal Management Companies.	Sen. Jenkins

Adjournment

Pages Attending

DATE: 30 June

COMMITTEE: Commerce 11Am 1027LB

Sen. Soles

Page Name	Hometown	Sponsoring Senator
Shaquila Jones	Maysville	Brown
Nia Matherson	Greensboro	Dorsett
Michael Rhodes	Goldsboro	Davis
Jamar Barnes	Goldsboro	Davis
Emma Curtis	Clyde	Queen
Robby Rucho	Matthews	Rucho
Scott Stewart	West End	Blake
Kathleen Reittinger	Greensboro	Vaughn
Herman Fernandez	Fayetteville	Rand
Ian Whitson	Snow Hill	Davis

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Doug Springer	Cape Fear River Watch
J Ramsey	NCIMS
Alice Sheffield	Pender Watch
Janice Wilson	citizen
Ray Mitchell	Cosmetic Arts
Connie Wilson	ECNC
Preston Howard	MCIC
Rob Dain	CCC
Stan Hurley	CCC
Lauren Whaley	NC Credit Union League
Heather Barrett	Hunton & Williams

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George Everett	Duke Energy
John Merritt	mcguire woods
Rita Harris	DOC
M Soles	DCR
Jessi Hayes	NC Home Builders Assn
Katy Harkins	Progress Energy
Zeb Talley	Progress Energy
[illegible]	JDI, ACPA
Kathryn Mellichamp	BCBSNC
Emily Gallimore	NCBA
Elizabeth French	NCMS
Allison Clapp	NCMS
Lindsay Clifton	Gov's Office

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NAME	FIRM OR AGENCY AND ADDRESS
Cam Cree	BPMHC
Amy Schilder	MWC
Daniel Long	NCWC
Camera Henley	Electricities of NC
DAVID BARNES	Poyner Spruill
John Monaghan	Piedmont Natural Gas Co.
[illegible]	North Carolina State Parks
Laura Godwin	NCSPA
[illegible]	Bone + Associates, LLC
[illegible]	SELC
[illegible] Blackburn	county Commiss. Association
Paul Meyer	NCLM

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Senate Commerce Committee — June 30, 2009

Name of Committee — **Date**

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Stan Williams	NCS
Don Rodgers	NC Appraisal Bd.
Philip Humphries	NC App. Board
John Peterson	NCEOA
Jeff Horan	DHHS-DHSR
Jeff Goodman	DHHS
Nancy Thompson	Weyerhaeuser
Ted Hamby	NC DOI
Mike James	DCI
Bill Rustin	ACP
Ken Wright	BCBS NC
Lee Ann C Reigman	FOK
Lynn Williamson	NCANPHA

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NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Willis	NCCCS
Mark Fleming	BCBSNC
[illegible]	NCPA
[illegible]	Attorney Raleigh
JOHN SHAW	WAKE UP WAKE
Christopher Hamand	NCACC
Betsy Yates	American Heart Assn
Jane Fitzgerald	CAL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 30, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	CAL
Emmett T. Bele	NCAR
Cody Thomas	NCAR -
Patrick Butler	[illegible]
Bill Rau	NC Justice Center
Paul Stam	NCBA
Greg McLeod	NCAGC
Scott Mouw	NC DENR
Jeunesse D. Hall	Natural Hair Stylist

HOUSE BILL 877
Committee Substitute Favorable 5/7/09

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:	Senate Commerce	**Date:**	June 29, 2009
Introduced by:	Rep. Wainwright	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***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 national fund. In order to be eligible for the maximum payment (which is calculated based on the state's proportionate share of the Federal Unemployment Tax Act 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 constitute 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-134(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1090
PROPOSED SENATE COMMITTEE SUBSTITUTE H1090-PCS70457-LR-32

Short Title: UI/Severance Modifications. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE DEFINITION OF TOTAL AND PARTIAL UNEMPLOYMENT RELATING TO THE TREATMENT OF SEVERANCE PAY UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If ~~he~~ the individual has payroll attachment but, because of lack of work during the payroll week for which ~~he~~ the individual is requesting the establishment of a benefit year, ~~he~~ the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~ the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If ~~he~~ the individual has no payroll attachment on the date ~~he~~ the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if ~~his~~ a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce ~~his~~ the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).

2. Partially unemployed, if ~~he~~ the claimant has payroll attachment but because of lack of work during the payroll week for which ~~he~~ the claimant is requesting benefits ~~he~~ the claimant worked less than three customary scheduled

full-time days in the establishment, plant, or industry in which ~~he~~ the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, ~~he~~ the individual is receiving, has received, or will receive as a result of ~~his~~ the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, ~~(iv) severance pay, (v)~~ (iv) separation pay, or ~~(vi)~~(v) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. ~~Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13.~~ Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

e. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was a permanent school employee regularly employed as a full-time substitute during the period of time for which the individual is requesting benefits."

SECTION 2. This act is effective when it becomes law and expires July 1, 2011.

HOUSE BILL 1090:
UI/Severance Modifications

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 26, 2009
Introduced by:	Rep. Wainwright	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1090 would allow a person who is receiving severance pay to be considered unemployed for purposes of collecting unemployment insurance benefits provided that person met the other criteria for determining unemployment..

CURRENT LAW: G.S. 96-8(10) defines what constitutes total (separated) and partial (attached) unemployment. Separated unemployment occurs when an individual is out of work for an indefinite period and no longer has any attachment to the payroll or work force of any employing unit. Attached unemployment occurs when an individual retains an attachment to the payroll and work force of an employer, but works less than three customarily scheduled workdays (or less than 60% of the customarily scheduled work hours) during a payroll week because the employer could not provide full-time work. Attached unemployment is also referred to as a "temporary layoff".

G.S. 96-8(10)c. provides that the following individuals will not be considered to be unemployed, if during the calendar week, the individual receives any of the following as a result to separation from employment:

- Wages in lieu of notice
- Accrued vacation pay
- Terminal leave pay
- Severance pay
- Separation pay (unless the individual is attending an institution of higher education, a secondary school, or an approved vocational, educational or training program)
- Dismissal payments or wages by whatever name.

BILL ANALYSIS: House Bill 1090 amends G.S. 96-8(10) to provide that an individual who receives severance pay may be considered unemployed, provided the individual meets the other criteria for determining unemployment.

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

BACKGROUND: The Social Security Act of 1935 and Chapter 96 of the General Statutes of North Carolina (the Employment Security Law) provide the basic framework for administering the unemployment insurance program in North Carolina. Eligible workers are individuals who (1) lost their jobs through no fault of their own, (2) worked during a specified time period and received a minimum amount of wages during that time period, (3) are able and available for work, and (4) are actively seeking new employment. All benefits and administrative costs of the unemployment insurance program are paid by employers through State Unemployment Tax Act (SUTA) and the Federal Unemployment Tax Act (FUTA) payments. Quarterly revenues from a SUTA and FUTA based on a percentage of each liable employer's payroll provide funds which can be used only to pay unemployment benefits to eligible workers and to administer the unemployment insurance program.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1090

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

H1090-ARC-18 [v.1]

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

Date June 30 ,2009

Senator Dorsett

moves to amend the bill on page 2, line 43, by deleting the phrase "This act is effective when it becomes law" and substituting "This act becomes effective October 1, 2009".

SIGNED Lanie L. Dorsett
Amendment Sponsor

SIGNED R.C. Soles, Jr
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 882*
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H882-CSSU-66 [v.2]

6/29/2009 2:24:34 PM

Short Title: Motor Vehicle Inspection Program Changes. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO REFUSE TO REGISTER A VEHICLE IF THE VEHICLE IS NOT IN COMPLIANCE WITH THE INSPECTIONS REQUIREMENTS, TO REQUIRE PROOF OF FINANCIAL RESPONSIBILITY FOR A THREE-DAY TRIP PERMIT, AND TO MAKE TECHNICAL CHANGES TO THE INSPECTION PROGRAM STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-54(6) reads as rewritten:

"(6) The vehicle is not in compliance with the ~~emissions~~ inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid."

SECTION 2. G.S. 20-183.4C reads as rewritten:

"**§ 20-183.4C. When a vehicle must be inspected; three-day trip permit.**

(a) Inspection. – A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

(1) A new vehicle must be inspected before it is sold at retail in this State. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(1a) A new motor vehicle dealer who is also licensed pursuant to this Article may, notwithstanding subdivision (1) of this section, examine the safety and emissions control devices on a new motor vehicle and perform such services necessary to ensure the motor vehicle conforms to the required specifications established by the manufacturer and contained in its predelivery check list. The completion of the predelivery inspection procedure required or recommended by the manufacturer on a new motor vehicle shall constitute the inspection required by subdivision (1) of this section. For the purposes of this subdivision, the date of inspection shall be deemed to be the date of the sale of the motor vehicle to a purchaser.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(3) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(4) ~~A~~ Except as authorized by the Commissioner for a single period of time not to exceed twelve months from the initial date of registration, a new or used vehicle acquired by a resident of this State from outside the State must be inspected before the vehicle is registered with the Division.

(5) ~~A~~ Except as authorized by the Commissioner for a single period of time not to exceed twelve months from the initial date of registration, a vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected before the vehicle is registered with the Division.

(5a) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the registration on the vehicle expires.

(7) A vehicle that is required to be inspected in accordance with this Part may be inspected 90 days prior to midnight of the last day of the month as designated by the vehicle registration sticker.

(8) A new or used vehicle acquired from a retailer in this State and registered with the Division with a new registration or a transferred registration must be inspected in accordance with this Part when the current registration expires.

(9) A used vehicle acquired from a private sale in this State must be inspected in accordance with this Part before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(10) An unregistered vehicle must be inspected before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(11) A person who owns a vehicle located outside of this State when its emissions inspection becomes due may obtain an emissions inspection in the jurisdiction where the vehicle is located, in lieu of a North Carolina emissions inspection, as long as the inspection meets the requirements of 40 C.F.R. § 51.

(b) Permit. – The Division may issue a three-day trip permit to a person that authorizes the person to drive ~~an insured~~a vehicle whose inspection authorization or registration has expired. The permit may only be issued when the person has furnished proof of financial responsibility. The permit must describe the vehicle whose inspection authorization or registration has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station, repair shop, or Division or contract agent registration office.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass the emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection.

(c) Exemption. – The Division may issue a temporary exemption from the inspection requirements of this Article for any vehicle that has been determined by the Division to be principally garaged, as defined under G.S. 58-37-1(11), in this State and is primarily operated outside a county subject to emissions inspection requirements or outside of this State."

SECTION 3. G.S. 20-183.7(c) and (d) read as rewritten:

"(c) Fee Distribution. – Fees collected for electronic inspection authorizations are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the ~~Emissions~~ Inspection Program Account established in subsection (d) of this section, the Telecommunications Account established in subsection (d1) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue

Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Air Quality of the Department of Environment and Natural Resources:

Recipient	Safety Only Electronic Authorization	Emissions and Safety Electronic Authorization
Highway Fund	.55	.55
~~Emissions~~ Inspection Program Account	.00	3.00
Telecommunications Account	.00	1.75
Volunteer Rescue/EMS Fund	.18	.18
Rescue Squad Workers' Relief Fund	.12	.12
Division of Air Quality	.00	.65.

(d) ~~Emissions~~ Inspection Program Account. – The ~~Emissions~~ Inspection Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle ~~emissions~~ inspection and maintenance program."

SECTION 4. G.S. 20-183.8A reads as rewritten:

"**§ 20-183.8A. Civil penalties against motorists for emissions violations; waiver.**

(a) Civil Penalties. – The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an ~~emissions~~ inspection and who engages in any of the emissions violations set out in this subsection. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. The civil penalties and violations are as follows:

(1) Fifty dollars ($50.00) for failure to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Two hundred fifty dollars ($250.00) for instructing or allowing a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Two hundred fifty dollars ($250.00) for incorrectly stating the vehicle's county of registration to avoid having an emissions inspection of the vehicle.

(b) Waiver. – The Division must waive the civil penalty assessed under subdivision (a)(1) of this section against a person who establishes the following:

(1) The person was continuously out of the State on active military duty from the date the ~~inspection sticker~~electronic authorization expired to the date the four-month grace period expired.

(2) No person operated the vehicle from the date the ~~inspection sticker~~electronic authorization expired to the date the four-month grace period expired.

(3) The person obtained a current ~~inspection sticker~~electronic authorization within 30 days after returning to the State."

SECTION 5. G.S. 20-183.8 is amended by adding a new subsection to read:

"(b1) A person who performs a safety inspection without a license, as required under G.S. 20-183.4, or an emissions inspection without a license, as required under G.S. 20-183.4A, is guilty of a Class 3 misdemeanor.

SECTION 6. Section 5 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 882:
Motor Vehicle Inspection Program Changes

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 30, 2009
Introduced by:	Rep. Cole	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Third Edition H882-CSSU-66		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 882 would:

- ***Require the DMV to refuse registration for a vehicle that is not in compliance with safety and emissions inspection requirements***
- ***Require a person to provide proof of financial responsibility in order to get a three-day trip permit when the person's vehicle inspection authorization or registration has expired***
- ***Authorize the DMV to issue a temporary exemption from inspection requirements when the vehicle is principally garaged in the State but primarily operated outside of an emissions county or outside of the State***
- ***Make it a Class 3 misdemeanor to perform a vehicle inspection without a license***
- ***Make technical changes to inspection program statutes***

[As introduced, this bill was identical to S826, as introduced by Sen. Jenkins, which is currently in Senate Commerce.]

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 882 would make the following changes to the law as it relates to the motor vehicle inspection program:

Refuse registration for vehicles not in compliance with inspection program. Current law requires the Division to refuse registration for a vehicle that is not in compliance with emission inspection requirements or when a civil penalty for failing to comply has not been paid. The bill would amend the provision to require the Division to refuse registration for a vehicle that is not in compliance with any inspection requirement of Part 2 of Article 3A (Safety and Emissions Inspection Program).

Proof of financial responsibility required for three-day trip permit. Under current law, a person with an insured vehicle whose inspection authorization or registration has expired may get a three-day trip permit that allows the person to drive the vehicle only from the place where the vehicle is parked to a location where the vehicle can be inspected or registered. The bill would amend the provision to say that the person must provide proof of financial responsibility to get the permit, not that the vehicle must be insured.

Temporary exemption from inspection when vehicle is primarily operated outside of an emissions county or out of the State. The bill would authorize the Division to temporarily exempt a vehicle from inspection requirements when a vehicle subject to emissions inspection requirements is principally garaged in the State but primarily operated outside of an emissions county or outside of the State.

Criminal penalty for inspecting without a license. The bill would make it a Class 3 misdemeanor to perform a safety or emissions inspection on a vehicle without the appropriate license. Assuming no prior convictions, a Class 3 misdemeanor is punishable by 1-10 days of community punishment and/or a fine up to $200.

EFFECTIVE DATE: The section of the act that makes it a misdemeanor to inspect a vehicle without a license would become effective December 1, 2009, and would apply to offenses committed on or after that date. The remainder of the act would be effective when it becomes law.

H882-SMSU-118(CSSU-66) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 291
Committee Substitute Favorable 5/20/09
Third Edition Engrossed 5/26/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H291-CSRO-67 [v.2]

6/29/2009 7:31:09 PM

Short Title: Hair Braider Licensure/Cosmetic Art Act. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR BRAIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-2 reads as rewritten:

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. – The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. – A person who rents a booth in a cosmetic art shop.

(4a) Braiding teacher. – An individual licensed by the Board to teach hair braiding.

(5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, hair braiding, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.

(6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.

(7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

(8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical

apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.

(9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(11b) Hair braider. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes hair braiding.

(12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.

(13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.

(14a) Hair braiding. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, or locking hair by hand or mechanical device. For purposes of this definition, the phrase 'hair braiding' shall include the use of artificial or natural hair.

(15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 1.1. G.S. 88B-6 reads as rewritten:

"**§ 88B-6. Board office, employees, funds, budget requirements.**

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board. The executive director shall serve at the pleasure of the Board.

(c) ~~With the approval of the Director of the Budget and the Office of State Personnel, the~~ The Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

~~(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.~~

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The provisions of the Executive Budget Act ~~and the State Personnel Act~~ apply to the administration of this Chapter."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"**§ 88B-10.1. Qualifications for licensing hair braiders.**

The Board shall issue a license to practice as a hair braider to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a hair braiding teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a hair braiding license issued by the Board.

(2) Submits proof of either practice as a hair braider in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, hair braider, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, hair braider, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"**§ 88B-13. Applicants licensed in other states.**

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, hair braider, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"**§ 88B-18. Examinations.**

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, hair braider, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, hair braider, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"**§ 88B-20. Fees required.**

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, hair braiders, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:

(1) Inspection of a newly established cosmetic art shop ..... $ 25.00
(2) Reciprocity applicant under G.S. 88B-13 ..... $ 15.00.

(c) The Board may charge license fees as follows:

(1) Cosmetologist ..... $ 39.00 every 3 years
(2) Apprentice ..... $ 10.00 per year
(3) Esthetician ..... $ 10.00 per year
(4) Manicurist ..... $ 10.00 per year
(4a) Hair braider ..... $ 10.00 per year
(5) Teacher ..... $ 10.00 every 2 years
(6) Cosmetic art shop per active booth ..... $ 3.00 per year
(7) Cosmetic art school ..... $ 50.00 per year
(8) Duplicate license ..... $ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher late renewal ..... $ 10.00
(2) Cosmetic art schools and shops late renewal ..... $ 10.00
(3) Reinstatement – cosmetic art schools and shops ..... $ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, hair braider, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, hair braider, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, hair braider, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~ profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, hair braider, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by

the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, hair braider, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, hair braider, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any hair braider who submits proof to the Board that the hair braider is actively engaged in the practice of hair braiding on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices hair braiding only and that submits proof to the Board that the shop is actively engaged in the practice of hair braiding on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. Section 1.1 of this act becomes effective when it becomes law. The remainder of this act becomes effective July 1, 2010, and applies to acts occurring on or after that date.

HOUSE BILL 291:
Hair Braider Licensure/Cosmetic Art Act

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 29, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to Third Edition H291-CSRO-67		

SUMMARY: House Bill 291 would require that persons engaging in the practice of hair braiding be licensed by the NC Board of Cosmetic Art Examiners.

The PCS adds a provision to give the Board more authority over its employees.

CURRENT LAW: The North Carolina Cosmetic Art Act sets out the qualifications for licensing cosmetologists, estheticians, and manicurists. The Board of Cosmetic Art Examiners (Board) is responsible for examining and determining the qualifications and fitness of applicants for licensure, and has the power to issue, renew, deny, restrict, suspend, or revoke licenses. The NC Administrative Code sets out the following definition of "natural hair braiding" as it pertains to the Board:

> "'Natural hair braiding' is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is *not subject to regulation pursuant to G.S. 88B*, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair." (21 NCAC 14A.0101)

BILL ANALYSIS: HB 291 would amend the Cosmetic Art Act to require the licensure of persons engaged in the practice of hair braiding.

Definition of hair braiding – HB 291 includes hair braiding within the definition of cosmetic art. This means that the activity of hair braiding would be regulated by the Board, and that hair braiding shops would have to comply with the same requirements that apply to all other cosmetic art shops – including licensing and sanitation requirements. "Hair braiding" is defined as a service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device -- including the use of artificial or natural hair.

Qualifications for licensure as a hair braider – Licensure requires successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school, passage of an examination conducted by the Board, and payment of a $10 license fee and other applicable fees.[1] The license must be renewed on or before October 1.

Qualifications for licensure as a braiding teacher - A braiding teacher must hold a hair braiding license, and must submit proof of either (1) practice as a hair braider for a period equivalent to two years of full-time work immediately prior to the time of the application, or (2) successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school. The applicant may pay $10 license fee by October 1 every two years.

Punishment for practicing without a license - As with other professions that must be licensed by the Board, ***practicing hair braiding without a license would be a Class 3 misdemeanor.*** A Class 3

[1] The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations.

misdemeanor, assuming the person has no prior convictions, is punishable by 1-10 days of community punishment and/or a fine up to $200.

Exemptions – The bill provides the following exemptions:

- A person who submits proof to the Board that he or she is actively engaged in the practice of hair braiding on the effective date of the bill is exempt from the education requirement; however, the person must pass an examination and pay the required licensing fee.
- There is a one-year grace period for a hair braiding shop to comply with licensing requirements for cosmetic art shops, if the shop submits proof that it is actively engaged in the practice of hair braiding on the effective date of the bill. All persons who do not apply to the Board within one year of the effective date of the bill would be required to complete all training and examination requirements, and to otherwise comply with the provisions of Chapter 88B of the General Statutes.
- A licensee who is in active practice as a hair braider, has practiced for at least 10 years in that profession, and is 60 years of age or older does not have to meet the continuing education requirements.[2]

The PCS adds Section 1.1 to the bill. This section amends the law with regard to the employees of the Board. Currently, the Board must obtain the approval of the Director of the Budget and the Office of State Personnel to employ inspectors, investigators and other staff. In addition, the salaries of its employees are subject to the State Personnel Act. The PCS removes the requirement of approval for hiring employees and also removes all references to the State Personnel Act.

EFFECTIVE DATE: Section 1.1 of the bill would become effective when it becomes law. The remainder of the bill would become effective October 1, 2009 and apply to acts occurring on or after that date.

BACKGROUND: A 2008 report prepared by the Colorado Department of Regulatory Agencies indicates that although all 50 states regulate barbers and cosmetologists, regulation of hair braiders/natural hairstylists in other states is widely divergent. Following are the different ways states address this issue.

Hair braiding/natural hairstyling not addressed in statute. In the most common scenario, evident in 23 states, the law is silent on the issue of hair braiding/natural hairstyling. These practices are neither included in the definitions of cosmetology or hairstyling, nor are they specifically excluded. In practical terms, this means that state cosmetology boards deal with this issue on a case-by-case basis. These states include Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Indiana, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Utah, Vermont, Washington, West Virginia and Wisconsin.

Cosmetologist/hairstylist license specifically required. In Colorado and six other states, current law requires individuals to obtain a cosmetology or hairstyling license to practice hair braiding/natural hairstyling. These states include Illinois, Iowa, Missouri, Oregon, South Dakota and Wyoming.

[2] This exemption currently applies to cosmetologists, estheticians, and manicurists. All other hair braiders, teachers, cosmetologists, and estheticians must annually complete eight hours of Board-approved continuing education for each year of the licensing cycle.

Qualified exemption. Three states—Kansas, Minnesota, and Mississippi—essentially exempt hair braiders/natural hairstylists from the barber/cosmetology law on the condition that applicants complete a health and sanitation course or complete a self-test demonstrating an understanding of correct sanitation practices.

Specialized hair braiding/natural hairstyling license required. Eleven jurisdictions have a specialized hair braiding/natural hairstyling license, including the District of Columbia, Florida, Louisiana, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Virginia.

Exemption. Arizona, California, Connecticut, Georgia, Maryland, Michigan, and North Carolina exempt hair braiders/natural hairstylists from the barber/cosmetology law. Michigan does issue a natural hair culturist license, but such license is optional, not required.

The Colorado report indicates that the requirements of these licensing programs vary widely. For example, Louisiana requires applicants to complete a total of 1,000 hours in training to qualify for an alternative hair design permit, while Texas requires just 35 hours of training to qualify for a hair braiding specialty certificate of registration. Ohio requires 450 hours of training. The scope of practice permitted by the various specialty licenses also varies. In both Florida and South Carolina, the use of extensions and wefts are excluded from the practice of hair braiders. Because use of extensions and wefts is widespread among hair braiders/natural hairstylists, this limitation effectively compels individuals wishing to provide these services to seek a traditional barber or cosmetologist license.

Brenda Carter, counsel to House Ways and Means/Broadband Connectivity, substantially contributed to this summary.

H291-SMRO-135(CSRO-67) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 291 (Third Edition)

SHORT TITLE: Hair Braider Licensure/Cosmetic Art Act.

SPONSOR(S): Representatives Parmon and Womble

FISCAL IMPACT

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

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
REVENUES	***No Estimate Available*** ***See Assumptions and Methodology***				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Cosmetic Examiners

EFFECTIVE DATE: July 1, 2010

BILL SUMMARY:

House Bill 291 amends GS Chapter 88B (Cosmetic Act) as title indicates. Defines hair braiding as a service resulting in tension on hair strands or roots, whether by hand or mechanical device. Adds new GS 88B-10.1 setting out qualifications for licensure, including completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school. Adds new GS 88B-11(e) establishing licensure requirements for a hair braiding teacher. Makes conforming changes throughout GS 88B. Amends GS 88B-14(b) to require an applicant for licensing of a cosmetic art shop to list all licensees (was, licensed cosmetologists) who practice cosmetic art in the shop. Amends GS 88B-20 to allow the NC Board of Cosmetic Art Examiners to charge an annual $10 hair braider license fee and a $10 late and reinstatement fee. Exempts persons actively engaged in the practice of hair braiding at the time this law becomes effective from the 300-hour training requirement, provided that they apply for licensure within one year of effective date.

Source: Bill Digest H.B. 291 (02/24/0200)

ASSUMPTIONS AND METHODOLOGY:

House Bill 291 adds hair braiding to the list of cosmetic arts that are regulated by the Board of Cosmetic Art Examiners. The bill would require the licensure of individuals engaged in the practice of hair braiding and sets up qualifications for this licensure. The bill creates a $10 license fee for hair braiders.

Because the Board of Cosmetic Examiners does not currently license hair braiders, the creation of a new license and fee for hair braiders will result in an increase in revenues for the Board. However, it is impossible to estimate exactly how much this increase will be. This is due to the fact that the Board does not currently track the number of hair braiders in North Carolina and that there is not currently an association that tracks these numbers.

SOURCES OF DATA: North Carolina Board of Cosmetic Examiners

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marjorie Rutherford

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 26, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 1595
Committee Substitute Favorable 5/20/09
Committee Substitute #2 Favorable 6/3/09

Short Title: Malt Beverage Special Permit. (Public)

Sponsors:

Referred to:

May 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE MALT BEVERAGE SPECIAL EVENT PERMITS AND MALT BEVERAGE TASTING PERMITS IN THE SAME OR SIMILAR MANNER AS WINE.

Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

Whereas, North Carolina's wineries have blossomed into a $1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

Whereas, North Carolina's craft brewers are also a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

Whereas, North Carolina's craft brewers could also serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

Whereas, North Carolina is now being recognized as a highly respected State for specialty malt beverages; and

Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.

(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.
(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.
(36) Repealed by Session Laws 2005-380, s. 1, effective September 8, 2005, and applicable to wine shipper permit applications submitted on or after that date.
(37) Wine shop permit – $100.00.
(38) Winemaking on premises permit – $400.00.
(39) Wine shipper packager permit – $100.00.
(40) Malt beverage special event permit – $200.00.
(41) Malt beverage tasting permit – $100.00."

SECTION 2. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(18) Malt Beverage Tasting Permit. – A malt beverage tasting permit authorizes malt beverage tastings on a premises holding a retail permit, by the retail permit holder or his employee. A representative of the brewery whose beverages are being featured at the tasting shall be present at the tasting unless the wholesaler, or a wholesaler's employee, determines that no representative of the brewery needs to be present. A malt beverage tasting consists of the offering of a sample of one or more malt beverage products, in amounts of no more than two ounces for each sample, without charge, to customers of the business. Any persons pouring malt beverage at a malt beverage tasting shall be at least 21 years of age.

a. Representatives of the brewery which produced the malt beverage, a wholesaler, or a wholesaler's employee may assist with the tasting. Assisting with a malt beverage tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the malt beverage tasting.

b. When a representative of the brewery that produced the malt beverage, a malt beverage wholesaler, or a malt beverage wholesaler's employee assists in a malt beverage tasting conducted by a retail permit holder:
1. The retail permit holder shall designate an employee to actively supervise the malt beverage tasting.
2. A retail permit holder's employee shall not supervise more than three malt beverage tasting areas.
3. No more than six malt beverages may be tasted at any one tasting area.
4. The malt beverage tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the malt beverage tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of malt beverages, and that the tastings are not used by industry members for unlawful inducements to retail permit holders. Except for purposes of this subdivision, the holder of a malt beverage tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a malt beverage tasting permit."

SECTION 3. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler permit
(18) Cider and vinegar ~~manufacturer.~~manufacturer
(19) Wine producer ~~permit.~~permit
(20) Malt beverage special event permit."

SECTION 4. Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.5. Authorization of malt beverage special event permit.**

(a) Authorization. – The holder of a brewery, malt beverage importer, or nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the

permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(b) Limitation. – A malt beverage special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of malt beverages. A malt beverage special event shall not be used as subterfuge for malt beverages suppliers to ship directly to retail permittees unless otherwise authorized by law."

SECTION 5. This act becomes effective October 1, 2009.

HOUSE BILL 1595:
Malt Beverage Special Permit

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 29, 2009
Introduced by:	Reps. Tillis, Ross	**Prepared by:**	Steven Rose Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1595 would authorize the ABC Commission to issue two new permits: a malt beverage tasting permit that would allow malt beverage tastings at grocery stores and other food businesses, and a malt beverage special event permit that would authorize the permittee to give free samples and to sell its products at trade shows, conventions, shopping malls, various festivals & other similar events approved by the ABC Commission.

CURRENT LAW: For the sale and on premises consumption of malt beverages, an establishment must have an on-premises malt beverages permit. The permit may be issued to restaurants, hotels, eating establishments, food businesses, retail businesses, private clubs, community theatres, convention centers, and certain breweries in areas where the sale of the beverage is lawful. The holder of a brewery permit may give its products to its employees and guests for consumption on the premises of the brewery. There are no provisions for retail permittees to hold malt beverage tastings. However, with the proper permit wine tastings are allowed at food businesses and wine shops. Wine tastings may also be held at special events for which a winery special event permit has been issued.

BILL ANALYSIS: House Bill 1595 would authorize the ABC Commission to issue two new permits:

- A malt beverage tasting permit that would allow malt beverage tastings at grocery stores and other food businesses
- A malt beverage special event permit that would authorize a brewery to give free samples and to sell its products at trade shows, conventions, shopping malls, various festivals & other similar events approved by the ABC Commission

Malt Beverage Tasting Permit

Section 2 of the bill would create a malt beverage tasting permit that would be issuable to any food business holding an ABC permit for the retail sale of malt beverages. The relevant statutory definition of a food business is *"an establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises."* Food businesses include grocery stores, convenience stores, and other establishments such as variety stores or drugstores, where food is regularly sold. A malt beverage tasting permit would authorize tastings on the premises, conducted and supervised by the holder of the permit. The bill would require that a representative of the brewery whose beverages are featured at the tasting be present, unless the wholesaler or a wholesaler's employee determined that no brewery representative is necessary. Wholesalers and representatives of the brewery that produced the malt beverage would be authorized to assist with the tastings by pouring samples and by checking identification. A malt beverage tasting is defined as the offering of a sample of one or more malt beverage products, without charge and in amounts of no more than two ounces for each sample, to customers of the business.

The bill specifies other conditions for malt beverage tastings, including the following:

- Retail permit holder would be required to designate an employee to actively supervise the tasting, and the employee would not be allowed to supervise more that three tasting areas
- No more than 6 malt beverages could be tasted at any one tasting area
- The tasting could not last longer than 4 hours from the designate starting time

The holder of the retail permit would be liable for any violations of ABC law in connection with the tasting. **Section 1** of the bill provides that the application fee for the malt beverage tasting permit would be $100.00.

Malt Beverage Special Event Permit

Section 3 of the bill would authorize the ABC Commission to issue a malt beverage special event permit; **Section 4** would authorize the holder of a brewery permit, malt beverage importer permit, or nonresident malt beverage vendor permit to obtain a special event permit allowing the permit holder to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, and various festivals, local fundraisers and other similar events approved by the ABC Commission. The permit would only be valid in jurisdictions that have approved the sale of malt beverages. **Section 1** of the bill provides that the application fee for the malt beverage special event permit would be $200.00.

Under G.S. 18B-903, the permits would be valid for one year; the renewal application fee would be 25% of the original application fee.

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

Brenda Carter, counsel to House Alcoholic Beverage Control, and Trina Griffin, Counsel to House Finance, substantially contributed to this summary.

H1595-SMRL-104(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1410
Committee Substitute Favorable 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1410-CSSB-50 [v.1]

6/10/2009 4:53:12 PM

Short Title: Clarify SEPA Applicability. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT FOR PURPOSES OF THE STATE ENVIRONMENTAL POLICY ACT, EXPENDITURE OF PUBLIC MONEYS INCLUDES PUBLIC MONEYS PAID OR TO BE PAID, WHETHER CONDITIONAL OR NOT, PURSUANT TO AN ECONOMIC INCENTIVE AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-4 reads as rewritten:

"**§ 113A-4. Cooperation of agencies; reports; availability of information.**

The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this ~~Article; and~~Article.

(2) Every State agency shall include in every recommendation or report on any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible ~~official~~ agency official. For purposes of this section, "expenditure of public moneys" includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement. The detailed statement shall ~~setting forth the following:~~set forth all of the following:

a. The environmental impact of the proposed ~~action;~~action.

b. Any significant adverse environmental effects ~~which~~ that cannot be avoided should the proposal be ~~implemented;~~implemented

c. Mitigation measures proposed to minimize the ~~impact;~~impact.

d. Alternatives to the proposed ~~action;~~action.

e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term ~~productivity; and~~productivity.

f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

(2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved.

Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the School of Government at the University of North Carolina at Chapel Hill."

SECTION 2. This act is effective when it becomes law and applies to any economic incentive agreement entered into on or after January 1, 2008.

HOUSE BILL 1410:
Clarify SEPA Applicability.

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 16, 2009
Introduced by:	Reps. Justice, Johnson, Justus, Brisson	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to Second Edition H1410-CSSB-50		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1410 would clarify that for purposes of the State Environmental Policy Act (SEPA), expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement.***

The PCS would be effective when it became law and apply to any economic incentive agreement entered into on or after January 1, 2008.

CURRENT LAW: SEPA requires preparation of an environmental document for every action involving **expenditure of public moneys** or use of public land for projects significantly affecting the quality of the environment in this State. The environmental document prepared must cover all of the following:

- The environmental impact of the proposed action.
- Any significant adverse environmental effects which cannot be avoided should the proposal be implemented.
- Mitigation measures proposed to minimize the impact.
- Alternatives to the proposed action.
- The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity.
- Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

BILL ANALYSIS: The PCS for House Bill 1410 would clarify that for purposes of SEPA, expenditure of public moneys includes public moneys paid or to be paid, whether conditional or not, pursuant to an economic incentive agreement.

EFFECTIVE DATE: The PCS would be effective when it became law and apply to any economic incentive agreement entered into on or after January 1, 2008.

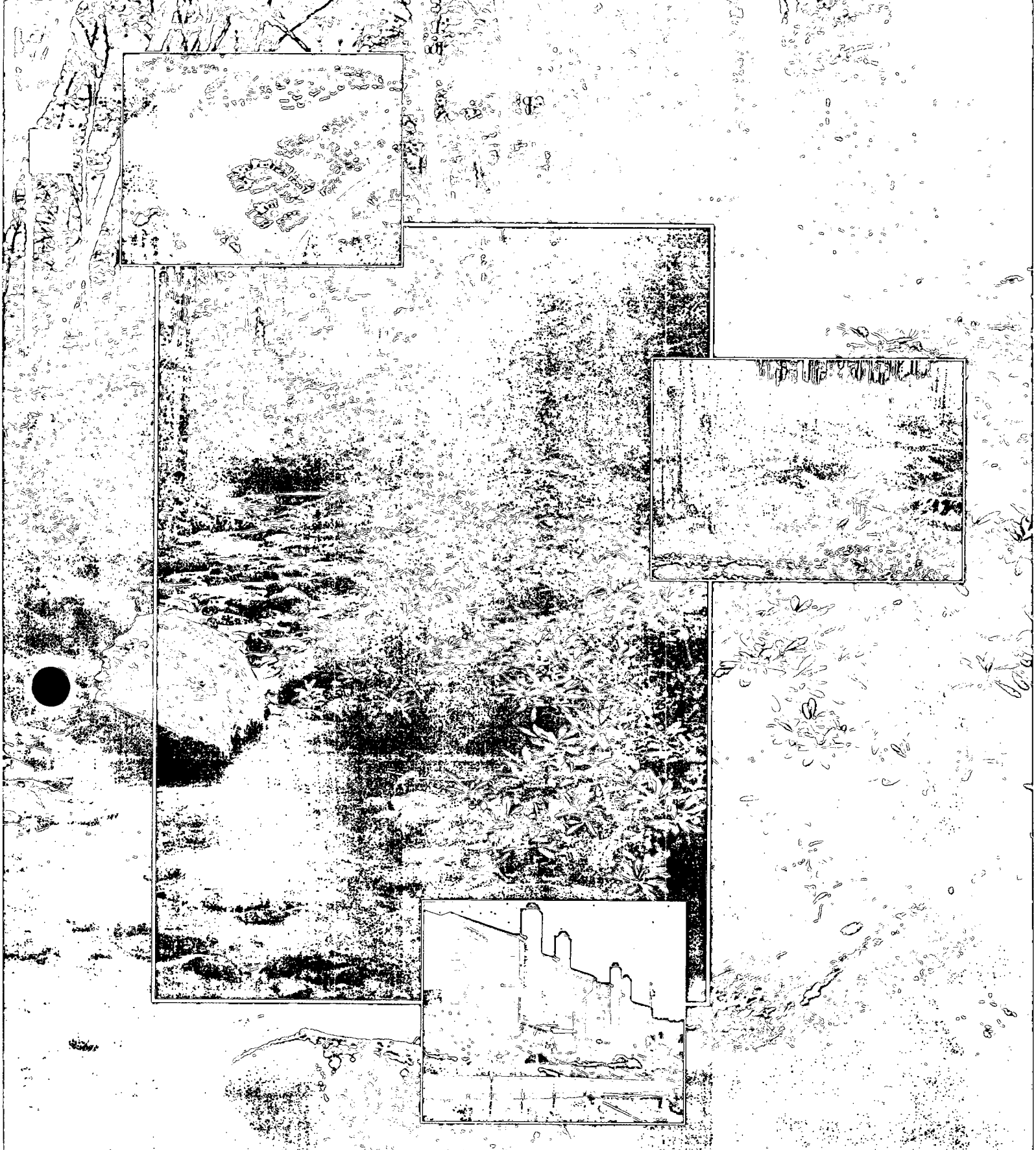
H1410-SMRI-64(CSSB-50) v1

Commerce Department Position on H 1410 – Senate Commerce Committee June 30, 2009

The Department of Commerce does not support the PCS for HB 1410 making all economic incentive grants subject to SEPA and will appreciate a no vote to report the bill from committee. Thanks for your consideration.

- HB 1410 would dramatically change the state's policy by altering the definition of state investment.
- The Economic Incentive grants authorized by the General Assembly are performance-based; One NC Fund and the Job Development Investment Grants are based on jobs created. No money is given up front.
- For a project requiring environmental permits, the grantee must obtain those permits, build the facility and make other investments, and create agreed-on jobs at an agreed-on average wage BEFORE being eligible to receive any incentive-grant disbursements. H 1410 would change that.
- We believe the Committee Substitute would have a significant, negative impact on economic development in North Carolina. HB 1410 would extend SEPA over economic development projects that receive any incentive, local or state. This could delay job creation and greatly hinder our state's efforts to recruit or expand industry to North Carolina.
- Applying SEPA to private economic development projects could delay commencement of economic development projects by between 6 months and 1.5 years. Projects that need to begin construction quickly would discount incentives offered by the state or local government because accepting them could make it impossible to meet construction timetables.
- The original intent of SEPA was to impose on state construction projects the conditions of NEPA when these projects fell outside the scope of NEPA. It was not intended or designed to apply broadly to private economic development or investment.
- Over 2500 existing companies in NC now have a DAQ Title V permit. Any of these companies that wish to expand or bring in new production facilities would be subject to SEPA if their project receives any state or local incentive. This is impact to existing industry would over and above the impact on any new companies trying to move to our state.
- During these difficult economic times, we should be very cautious about putting additional burdens on North Carolina companies seeking to expand, or companies outside the state looking to relocate here. We need every advantage possible to compete successfully in the global marketplace.
- Finally, we understand clearly that North Carolina's outstanding quality of life, including its natural resources, is a key advantage for the state. We believe the State's professionals responsible for environmental permitting and compliance should be allowed to do their jobs, as currently mandated, to help protect those resources and North Carolina's citizens.

N. C. Department of Commerce, June 30, 2009



North Carolina Department of Environment and Natural Resources

Guidance for Preparing SEPA Documents and Addressing Secondary and Cumulative Impacts

2. What is SEPA?

The SEPA is modeled after the National Environmental Policy Act (NEPA) and was adopted into law by the N.C. General Assembly in 1971(G.S. 113A, Article 1-13). The SEPA review process helps decision makers understand the environmental impacts of a proposed project. Implementation of SEPA requires documentation describing the project and identifying both the alternatives and the environmental impacts in a public document prior to any final decisions or actions. This law has several purposes:

- Encourage the wise, productive and beneficial use of the natural resources of the state without damage to the environment;
- Preserve the natural beauty of the state;
- Create a public awareness of our environment and its related programs; and
- Require state agencies to consider and report on environmental aspects and consequences of their actions involving the expenditure of public money or use of public land.

The SEPA requires state agencies to review and report the environmental effects of certain activities in either an EA or EIS.

When Does SEPA Apply?

For a project or activity to be subject to the SEPA it **must involve three** of the following triggers:

1. An ***action*** by a state agency (such as appropriating land or money, awarding grants, issuing permits, or granting licenses); **and**
2. Has a potential significant effect on natural resources, public health and safety, natural beauty or historical or cultural elements of the state's common inheritance; **and**
3. Expenditure of public monies; **or**
4. Private use of public land, state-owned submerged lands or public waters.

What are public lands? Public lands as defined in G.S. 113A-9 (7) would include all land owned by the state of North Carolina, by any state agency, or by the state for use by any state agency or political subdivision of the state. It includes submerged lands owned by the state (such as ***public trust areas***; see Appendix I).

"Use of public land" refers to those activities that result in changes to the natural cover or topography and include:

- The grant of a lease, ***easement*** or permit authorizing private use of public land; or

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1034
Committee Substitute Favorable 4/23/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1034-CSTG-27 [v.2]

6/16/2009 3:33:13 PM

Short Title: Allow Recorded Phone Messages/Public Safety. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AUTOMATIC DIALING AND RECORDED MESSAGE PLAYERS TO BE USED TO MAKE UNSOLICITED TELEPHONE CALLS TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-104 is amended to read:

"**§ 75-104. Restrictions on use of automatic dialing and recorded message players.**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

(1) All of the following are satisfied:
  a. The person making the call is any of the following:
    1. A tax-exempt charitable or civic organization.
    2. A political party or political candidate.
    3. A governmental official.
    4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.
  b. No part of the call is used to make a telephone solicitation.
  c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone ~~call~~call, and both of the following are satisfied:
  a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of ~~service.~~service, and both of the following are satisfied:

a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

(6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered ~~benefits.~~benefits, and both of the following are satisfied:

a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:

a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.

b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) ("HIPAA") and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by the government agency or product manufacturer, distributor or retailer instituting the recall.

c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) ("HIPAA") and any corresponding regulations pertaining to privacy."

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

HOUSE BILL 1034:
Allow Recorded Phone Messages/Public Safety

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 23, 2009
Introduced by:	Reps. Glazier, Barnhart, England	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Second Edition H1034-CSTG-27		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1034 would permit the use of automatic dialing and recorded message players to make unsolicited telephone calls to protect the public health, safety or welfare.***

CURRENT LAW: G.S. 75-104(a) prohibits the use of automatic dialing and recorded message players to make unsolicited telephone calls, subject to certain exceptions set forth in G.S. 75-104(b).

BILL ANALYSIS: The PCS for House Bill 1034 would amend the current law to add a provision to existing exceptions to the prohibition on automatic dialing requiring that:

- No part of the call is used to make a telephone solicitation; and
- The person making the call identifies his or her name, contact information, and nature of the call.

The PCS would also add a new exception to the prohibition, permitting the use of automatic dialing and recorded message players to make unsolicited telephone calls where the purpose of the call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:

- A product the subscriber has purchased is subject to a safety recall;
- The subscriber may have received a prescription or over-the-counter medication that is subject to a safety recall; or
- The subscriber has not picked up a filled prescription drug for a valid prescription on file with a licensed pharmacy.

The PCS also provides that no call made under this exception may be used to make a telephone solicitation, and the caller must identify the caller's contact information and the nature of the call.

EFFECTIVE DATE: The act would be effective when it becomes law.

Bill Patterson and Karen Cochrane-Brown contributed to this summary.

H1034-SMSU-119(CSTG-27) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1287
Committee Substitute Favorable 5/4/09
Committee Substitute #2 Favorable 5/11/09
Fourth Edition Engrossed 5/12/09

Short Title: Recycle Products Containing Mercury. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ALL PUBLIC AGENCIES TO RECYCLE ALL SPENT FLUORESCENT LIGHTS AND MERCURY THERMOSTATS; REQUIRE THE REMOVAL OF ALL FLUORESCENT LIGHTS AND MERCURY THERMOSTATS FROM BUILDINGS PRIOR TO DEMOLITION; AND BAN MERCURY-CONTAINING PRODUCTS FROM UNLINED LANDFILLS.

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 7. Management of Certain Products That Contain Mercury.

"**§ 130A-310.60. Recycling required by public agencies.**

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds shall establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before February 1, 2010, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environment and Natural Resources and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before May 1, 2010, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

"**§ 130A-310.61. Removal and recycling of mercury-containing products from structures to be demolished.**

Prior to demolition of any building or structure in the State, the contractor responsible for the demolition activity or the owner of the building or structure to be demolished shall remove all fluorescent lights and thermostats that contain mercury from the building or structure to be demolished."

SECTION 2. G.S. 130A-309.10 is amended by adding a new subsection to read:

"(m) No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 3. This act is effective when it becomes law, except that: (i) the recycling program required by G.S. 130A-310.60, as enacted by Section 1 of this act, shall be established and implemented by each State agency by December 1, 2009; (ii) G.S. 130A-310.61 as enacted by Section 1 of this act; and (iii) Section 2 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1287:
Recycle Products Containing Mercury

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 30, 2009
Introduced by:	Reps. Harrison, Burris-Floyd	**Prepared by:**	Wendy Graf Ray
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 1287 would: (i) require all public agencies to implement a program for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in State offices; (ii) require removal of all fluorescent lights and thermostats that contain mercury from buildings prior to demolition; and (iii) prohibit the disposal of fluorescent lights and thermostats that contain mercury in unlined landfills.***

CURRENT LAW: With regard to other recycling requirements applicable to State agencies, G.S.130A-309.14 requires all agencies to have a program to collect recyclable materials, specifically including aluminum, newspaper, sorted office paper, recyclable glass, and plastic bottles.

With regard to other items banned from disposal in landfills, other items include: used oil; yard trash; white goods; antifreeze; aluminum cans; whole scrap tires; lead-acid batteries; beverage containers that are required to be recycled by ABC permittees; motor vehicle oil filters (effective October 1, 2009); wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris (effective October 1, 2009); oyster shells; discarded computer equipment (effective January 1, 2011); and discarded televisions (effective January 1, 2011).[1]

BACKGROUND: Mercury is a toxic metal that can harm the brain, heart, kidneys, lungs, and immune system. It is found in certain consumer and industrial products, including fluorescent lights and thermostats. Improper disposal of such products can result in the release of mercury to the environment. Fragile products, such as fluorescent lights, may break during transportation and release mercury into the air. If a mercury-containing product ends up in a landfill, the mercury can leach into the surrounding soil or be released into the atmosphere.

BILL ANALYSIS: House Bill 1287 would:

- Require all public agencies (State agencies, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions) to: (i) implement a program by December 1, 2009 for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in State offices; and (ii) report on their compliance with this requirement to the Department of Environment and Natural Resources (DENR) and the Department of Administration (DOA) on or before February 1, 2010. DENR and DOA would then compile the information submitted from all agencies and jointly submit a report to the Environmental Review Commission on or before May 1, 2010.
- Require a contractor responsible for building demolition or an owner of property to be demolished to remove all fluorescent lights and thermostats that contain mercury from the building prior to demolition.

[1] These items are banned from disposal in ***all landfills.*** The disposal ban proposed under the PCS covering fluorescent lights and thermostats containing mercury would only be applicable to sanitary landfill for the disposal of construction and demolition debris, and other unlined landfills.

- Prohibit the disposal of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris, and other unlined landfills. A knowing violation of this provision would subject the violator to the imposition of administrative penalties, and would be punishable as a Class 1 misdemeanor[2,3].

EFFECTIVE DATE: The bill would be effective when it becomes law, except that the required recycling programs would have to be implemented by December 1, 2009, and the ban on disposal of fluorescent lights and thermostats containing mercury in unlined landfills would be effective December 1, 2009, and would apply to offenses committed on or after that date.

Jennifer McGinnis, counsel to House Environment and Natural Resources, substantially contributed to this summary.

H1287-SMSU-125(e4) v1

[2] See GS 130A-22 (Administrative Penalties) and GS 130A-25(a) (Misdemeanor)/GS 14-3(a) (Punishment of Misdemeanors...).

[3] The range of punishment for a Class 1 misdemeanor, assuming no prior convictions, is 1-45 days community punishment.

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.

HOUSE BILL 1478:
Design Professional Seals/Public Records

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 19, 2009
Introduced by:	Rep. Tillis	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1478 would make the image of the seal of a licensed design professional that appears on building inspection documents submitted electronically to a county or municipality confidential and not a public record.

CURRENT LAW: Chapter 132 of the General Statues (Public Records) 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. A public record includes digital images made or received pursuant to law or ordinance in connection with the transaction of public business by an agency or political subdivision of the State.

There are a number of exceptions to the law. G.S. 132-1.2 makes the following information confidential and not subject to disclosure:

- "Trade secrets" under the Trade Secrets Protection Act and meets some additional conditions.
- Account numbers for electronic payment as defined in the Statewide Accounts Receivable Program.
- Documents, file numbers, passwords, or any other information maintained by the Secretary of State pursuant to the Advance Health Care Directive Registry.
- Electronically captured images 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 would 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 (architects and professional engineers) 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 would require a municipality or a county that 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.

Brad Krehely, counsel to House Commerce, Small Business, and Entrepreneurship, substantially contributed to this summary.

H1478-SMRC-54(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1478 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Rucho

moves to amend the bill on page 2, line 5

( ) WHICH CHANGES THE TITLE

by deleting the word "July" and substituting "October".

SIGNED R A Rucho

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1485
Committee Substitute Favorable 5/11/09
Committee Substitute #2 Favorable 5/13/09

Short Title: Insurance/Health Care Provider Relationship. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO REFORM THE PROCESS FOR RECOVERY OF OVERPAYMENTS TO PROVIDERS BY INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-225 reads as rewritten:

"**§ 58-3-225. Prompt claim payments under health benefit plans.**

...

(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds ~~and~~ and, if the matter is not resolved pursuant to this subsection, by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than ~~30~~ 90 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery. The recovery of overpayments or offsetting of future payments may be made not more than two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor. Recovery of overpayments pursuant to this subsection shall be limited to the actual claims for which the insurer can provide the health care provider or facility with (i) the patient's name and identification number, (ii) the service date, (iii) the payment amount received by the health care provider or facility for the claim, and (iv) an explanation of the proposed revised payment amount which includes at a minimum the change in the code used, the amount of the revised payment, and the reason for the change in code. The requirements in the preceding sentence do not apply if the insurer provides documented evidence of fraud or other intentional misconduct by the health care provider or health care facility or its agents. If a health care provider or health care facility disputes a request for an overpayment recovery by the insurer, then the provider or facility may appeal the request within 45 days of receipt of the request for recovery. The insurer shall provide an internal appeals process for adjudicating such disputes within 90 days of the health care provider or health care facility commencing an appeal. If, within 150 calendar days after an insurer provides a health care provider or health care facility written notice of a demand for recovery of overpayments, the provider or facility has not provided a refund of an overpayment or an appeal of an alleged overpayment is still ongoing, then the insurer may seek recovery by offsetting future payments.

The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an ~~insurer~~ insurer, including a demand for recovery of overpayments under subsection (h) of this section that is made in bad faith, subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) Expired January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

SECTION 2. The Department of Insurance shall study the advisability of and need for an independent claims review process for disputes between insurers and providers analogous to that provided for appeals by covered persons of noncertification decisions by Part 4 of Article 50 of Chapter 58 of the General Statutes. The Department shall report its findings, including proposed legislation, to the General Assembly no later than April 1, 2011.

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

HOUSE BILL 1485:
Insurance/Health Care Provider Relationship

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 29, 2009
Introduced by:	Reps. Steen, Barnhart, Neumann, England	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1485 would extend the notice period required to be given by an insurer seeking recovery of overpayment or offsetting of future payments to a health care provider or facility and limit recovery of overpayments by insurers to the actual claims for which the insurer can provide specific detail, unless the insurer provides documented evidence of fraud or other intentional misconduct by the provider, facility or its agents. It would establish a process for the filing and adjudication of provider or facility appeals disputing the insurer's requested overpayment recovery, and would direct insurers to provide internal appeals processes for adjudicating the disputes within 90 days. It would also allow insurers to recover overpayments by offsetting future payments if, within 150 days of the insurer providing notice requesting recovery, the provider or facility has not provided a refund of an overpayment or an appeal of an alleged overpayment is still ongoing.***

CURRENT LAW: Subsection (h) of G.S. 58-3-225 (the "prompt payment" statute), provides the following procedures and timelines for recovery of overpayments by insurers to health care providers or facilities:

- Before seeking overpayment recovery from or offsetting payments to a health care provider or facility, the insurer must provide give 30 days written notice.
- Insurers may recover overpayments to providers or facilities *and* to offset future payments to the providers up to two years after of the original claim payment.
- Violations by an insurer subjects the insurer to sanctions restitution and monetary penalties from of $100-$1,000).

BILL ANALYSIS:

Section 1 amends G.S. 58-3-225(h) to do the following:

- Extend, from 30 to 90 days, the notice an insurer must give to a health care provider or facility of the insurer's intent to seek recovery of overpayment of claims.
- Limit recovery of overpayments to actual claims for which the insurer can provide the health care provider or facility with the patient name and ID number, service date, claim payment amount, and an explanation of the proposed revised payment amount. This requirement is waived if the insurer provides documented evidence of fraud or other intentional misconduct by the provider, facility or its agents.
- Allow providers and facilities to appeal insurers' requests for recovery within 45 days of receiving a request.
- Direct insurers to provide an internal appeals process to adjudicate disputed requests for recovery within 90 days of commencement of the appeal.
- Allow insurers to seek recovery from providers or facilities by offsetting future payments if no refund of overpayment has been made or if an appeal is ongoing 150 days after the insurer has given the provider or facility written notice of its demand for recovery of overpayment.

- Makes bad faith demands for recovery of overpayments a violation punishable monetary penalties from of $100-$1,000

Section 2 directs the Department of Insurance to study the advisability of and need for an independent claims review process for disputes between insurers and providers. The Department must report its findings, including proposed legislation, to the General Assembly by April 1, 2011.

EFFECTIVE DATE: The act is effective when it becomes law. Section 1 applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

**This summary was substantially contributed to by Ben Popkin, House Insurance Committee Counsel and Kara McCraw, House Judiciary II Committee Counsel..*

H1485-SMRC-60(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: House Bill 1485 (Third Edition)

SHORT TITLE: Insurance/Health Care Provider Relationship.

SPONSOR(S):

SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: House Bill 1485 (Third Edition) amends the prompt payment law, under G.S. 58-3-225, to change requirements with respect to claims payment recoveries involving overpayments between insurers and health care providers and facilities. The proposed changes include increasing the notice requirement an insurer must give a health care provider or facility regarding a potential overpayment recovery and limiting the recovery of overpayments to claims where the insurer can identify the specific patient, date of service, claim amount, etc. The proposed changes would also require an insurer to provide a brief explanation of why a proposed change in the original claim amount paid is necessary. For overpayment recoveries sought by an insurer as a result of documented fraud the proposed requirements do not apply.

The proposed change applies to the Plan by cross reference under G.S. 135-44.4(28) which applies the prompt payment law to the Plan as if it were an insurer regulated under G.S. 58-3-225.

EFFECTIVE DATE: When it becomes law.

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for Teachers and State Employees, estimates that the proposed legislation will increase annual administrative costs to the Plan by $160,000 (excluding impact to cash flow) based on information provided by the Plan's Claims Processing Contractor. Aon Consulting further expects the legislation will have an impact to annual medical claims costs incurred by the Plan, but notes that these costs are not quantifiable based on available information.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, comments that annual administrative costs (including impact to cash flow) for the Plan may increase in a range of $180,000 to $260,000 based on information provided by the Plan's Claims Processing Contractor. Hartman notes that potential impact on the Plan's annual medical claims costs, as a result of the proposed extended time line for the Plan's Claims Processing Contractor to initiate an action to seek overpayment recoveries, is not quantifiable based on available information.

As of July 1, 2009, the State will continue to finance the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts will be derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage will be paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.5 billion for FY 2009-10 and $2.7 billion for FY 2010-11. The Plan's PPO benefit design will include two alternative benefit levels listed below:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums; and

2) The "Standard" 80/20 plan.

The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under both plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised Summer 2008) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year were projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan were expected to be $2.4 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss was projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses were expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year.

Financial Projection (Revised April 2009) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $49.0 million from Medicare Part D subsidies, $3.3 million from investment earnings, and $250.0 million from a direct General Fund appropriation from the Rainy Day Fund (Savings Reserve Account) for a total of approximately $2.6 billion in receipt income for the year. The $250 million from a direct General Fund appropriation was provided by Session Law 2009-16 (Senate Bill 287) to finance a shortfall in funds available to pay health care benefits, administrative costs, and adequately fund the Plan's beginning cash balance on July 1, 2009. Projected disbursements from the Plan are expected to be $2.4 billion in claim-payment expenses and $180.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $7.1 million for the fiscal year, assuming a 9% annual claims growth trend.

Financial Projection 2009-11 Biennium (April 2009) – Session Law 2009-16 (Senate Bill 287) appropriates funds from various sources, authorizes annual premium rate increases, makes various benefit and provider related changes to achieve financial savings, and directs other various changes to the Plan. The enacted law also appropriates the sum of $250 million from the Savings Reserve Account ("Rainy Day

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	**35,254**	**533,204**	**98,351**	**666,809**	**100%**
Percent of Total	**5.3%**	**80.0%**	**14.7%**	**100.0%**	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	**13,481**	**401,253**	**66,319**	**481,053**

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 1485 (3rd Edition): An Act to Reform the Process For Recovery of Overpayments to Providers By Insurers," June 17, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, " House Bill 1485 (3rd Edition): Reform Process of Overpayment to Providers", June 18, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

"HB 1485, Insurance/Health Care Provider Relationship, Financial Impact Analysis", State Health Plan for Teachers and State Employees, June 18, 2009.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 22, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

HOUSE BILL 1485 (3RD EDITION)

REFORM PROCESS OF OVERPAYMENT TO PROVIDERS

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

June 2009

REFORM PROCESS OF OVERPAYMENT TO PROVIDERS

PLAN CHANGES

The proposed legislation defines administrative processes and disclosure requirements for the recovery of overpayments made to health care providers or health care facilities. The full text of the bill is attached to this actuarial note.

PROJECTED COSTS

	Based on "Midpoint" Increase (in millions)		
Plan Design Change →	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Changes for recovery of overpayments to providers	Fiscal impact cannot be quantified		

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- Medical fiscal impact considerations and administrative cost estimates related to the proposed changes outlined in this bill were provided to Aon by State Health Plan based on information received from the Plan's Claims Processing Contractor. This Financial Impact Analysis is attached to this actuarial note.

- Annual administrative cost, including Full Time Equivalents and other administrative costs, is projected to be $160,000 per year.

- Aon expects the bill will have a fiscal impact on the Plan's medical cost; however, we do not believe the impacts can be quantified for purposes of an actuarial note.

H1485

Insurance / Health Care Provider Relationship

Financial Impact Analysis

This impact analysis was developed based on information provided by BCBSNC.

Bill Summary

- Revises overpayment recovery requirements **(Section h of G.S. 58-3-225)** to:
  - Require a 150 day timeline prior to recovering overpayments from future payments
  - Impose new and detailed requirements by claim in refund requests "unless there is documented evidence of fraud or other intentional misconduct by the health care provider, health care facility or its agents"

I. **Impacts of Change to (G.S.58-3-225, Section h) Prompt Claim Payments under health plans**

- **Assuming this subsection of the Prompt Pay Legislation applies to the State Health Plan, these new provisions could reduce BCBSNC's ability to seek and receive reimbursement for overpayments to providers or to deny or withhold payment on State Health Plan's behalf in cases where there is a reasonable belief of fraud or other intentional misconduct. The impacts are as follows:**
  - Imposing new Notice Requirements delaying BCBSNC's ability to seek refunds on SHP's behalf through future claims payments for at least 150 days
    - **Annual Estimated Cost Impact to State Health Plan: $100,000**
  - Imposing new and detailed requirements to calculate overpayments on a claim-by-claim basis and including specific claims coding in refund requests "unless there is documented evidence of fraud or other intentional misconduct by the health care provider, health care facility or its agents"
    - Estimated Annual FTE Cost to Administer New Requirements: 1 to 2 FTE's, plus overhead, or $80,000--$160,000
    - Estimated Loss in Ability to Recover Overpayments: Although there is an indication that these new requirements may reduce BCBSNC's ability to collect overpayments on SHP's behalf, SHP cannot validate the impact.
    - Recoding the BCBSNC systems to set up new refund request processes and timelines; SHP portion: **Not Yet Available**
  - Annual Costs--$260,000

II. **Assumptions**

- FTE requirements are estimated based on typical staffing requirements attributable for administration of the State Health Plan by BCBSNC.
- Loss of savings due to new overpayment recovery provisions in the Prompt Pay Law assumes State Health Plan is subject to all of **G.S. 58-3-225.**

NOTE: Analysis / Estimates Prepared by State Health Plan for Teachers and State Employees Based on Information m Blue Cross and Blue Shield of North Carolina

The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an ~~insurer~~ insurer, including a demand for recovery of overpayments under subsection (h) of this section that is made in bad faith, subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) Expired January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

SECTION 2. The Department of Insurance shall study the advisability of and need for an independent claims review process for disputes between insurers and providers analogous to that provided for appeals by covered persons of noncertification decisions by Part 4 of Article 50 of Chapter 58 of the General Statutes. The Department shall report its findings, including proposed legislation, to the General Assembly no later than April 1, 2011.

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1485

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

H1485-ARC-17 [v.1]

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

Date _____,2009

Senator Blue

moves to amend the bill on page 2, line 32, by deleting the word "April" and substituting "March".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1595

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

H1595-ASU-17 [v.1]

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

Date June 30 ,2009

Senator McKissick

moves to amend the bill on page 1, lines 21-22, by rewriting the lines to read:

"North Carolina General Assembly have helped grow North Carolina's wine industry; and

Whereas, the General Assembly reaffirms its support of state-based alcohol regulation and the three-tier distribution of wine and malt beverages;

Now, therefore,"; and

on page 3, line 9, by deleting "six" and substituting "four"; and

on page 4, line 4, by adding the following at the end of the line:

"Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE COMMERCE COMMITTEE
Tuesday, July 7, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on July 7, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles presided. Caitte Safrit, and Ethan Grant of Chapel Hill; Kareem Shaw of Riegelwood; Peter Kenna, Patrick Renner, and Kyri Beasley of Raleigh; Parker Adams of Clayton, J.R. Borders of Cornelius; and Caroline Ward of Charlotte served as pages.

H.B. 1090 – UI/Severance Modifications.

Senator Soles explained that the bill had been taken up at the previous meeting and the discussion was being carried over. The proposed committee substitute (PCS) and amendment had been approved previously for discussion. The PCS amends the definition of total and partial unemployment relating to the treatment of severance pay under the Employment Security Laws of North Carolina. David Clegg, the Employment Security Commission Deputy Director, was recognized to answer questions. Senator Blue moved for a favorable report and the motion carried. A copy of the PCS, the amendment and the summary is attached.

S.B. 32 – Employers Must Use Federal E-Verify Program.

Senator Snow was recognized to explain the bill. It requires that employers in this State use the federal E-verify program or a similar verification of work authorization program and appropriates funds to establish and support a position to assist in the implementation and execution of this act. Senator Snow passed out three handouts with information regarding the E-verify program. Ron Woodard, Director of NC Listen, was recognized to speak in favor of the bill and the occurrence of inaccurate reports by the E-verify program. Joe Stewart, NC Chamber, was recognized and spoke of concerns about the sanctions process of subcontractors hiring illegal aliens, thinks the bills needs further clarifying language, and thinks this is a federal, not a State, issue. Bill Gheen, Americans for Legal Immigration PAC, was recognized to speak in favor of the bill. Jessie Hayes, NC Homebuilders Association, was recognized to speak in opposition to the bill since mandatory participation will be a burden to small businesses without internet service. Rebecca Troutman, NC County Commissioners Association, was recognized with concerns that county attorneys do not have the time or the authority to investigate reports of illegal hirings. Bill Rowe, NC Justice Center, opposes the current version of the bill and will work with Senator Snow to improve the language. Senator Rucho moved for a favorable report. Senator McKissick made a counter motion to form a subcommittee to work on clarifying the language of the bill. The motion failed. Senator Rucho motion was put to vote and the motion carried. A copy of the bill, the summary and Senator Snow's handouts is attached.

The meeting adjourned at 12:01 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 07, 2009

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

FAVORABLE

S.B. **32** Employers Must Use Federal E-Verify Program.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

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

H.B. **1090** UI/Severance Modifications.
Draft Number: 30426
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:
H1090 – Sen. Nesbitt

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 17, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **746** Amend Professional Counselors Act/Fees.

Draft Number:	30409
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 7, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 667	2009 Viticulture/Enology Act.	Representative Goodwin Representative Gibson, III
HB 996	Repeal ACH/Public Housing Study.	Representative Farmer-Butterfield Representative Tolson
HB 1090	UI/Severance Modifications.	Representative Wainwright
HB 1228	ABC Rules/Private Clubs.	Representative Gibson, III
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart
SB 32	Employers Must Use Federal E-Verify Program.	Senator Snow
SB 516	Community Association Managers Licensure.	Senator Hunt
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, July 7, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 996	Repeal ACH/Public Housing Study.	Rep. Farmer-Butterfield Rep. Tolson
HB 1090	UI/Severance Modifications.	Rep. Wainwright
SB 32	Employers Must Use Federal E-Verify Program.	Sen. Snow
SB 516	Community Association Managers Licensure.	Sen. Hunt

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Emily Peters	WNC-TV
Henry Jones	Attorney-Raleigh
John McInerney	Talis Management Group
Emily Fallenaw	NBA
[illegible]	Hunton & Williams
[illegible]	NCRMA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Jessi Hays	
Irene Godinez	El Pueblo
Paula A. Wolf	El Pueblo
Jami Fitzgerald	CAL
Rev. Mark Creech	CAL
Bill Rowe	NC Justice Center
Jack Avery	NCRLA
Dani Martinez-Moore	NC Justice Center

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

July 7, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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Delma DeCamillis	UNC-IOG
Robert Baer	IPM Corp.
John Lawton	CAI
T Miller	NCREC
Lindsey Wakely	NCREC
Sarah Preston	ACLU-NC
Donna Carpenter	Charlotte Regional Visitors Authority
Lauren Whaley	NC Credit Union League
Camern Henley	Electricities of NC
Gregg Thompson	NPID
Cameron Moore	BASF
PBP	NCFB

Name	Firm or agency and address
RON WOODARD	NC LISTEN
DAVE Simpl	CAUC
MANAKI	NCBAA
[signature]	JD, AL, PA
[signature]	~~LATF~~
DANIEL BLUM	K+L GATES
[signature]	NC BIA
KISTO HUFF	NCHCFA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

July 7, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Patrick T. Boffetti	[illegible]
Joe Lancer	520 Wicker
Wes Glick	[illegible]
Mark Jones	ATPT
[illegible]	FCC
Chuck Allen	US Airways
Rick Murphy	PGA of America
Katherine Davis	EC
Alicia Davis	MW
William Glen	AIPAC

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Senate Commerce Committee — July 7, 2009

Name of Committee — **Date**

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Rev. Mark Creech	CAL
Grayson McKissick	
Rebecca Troxler	NCACC
[signature]	NCFBS
Cassandra White	NCAOC
[signature]	NCALTCF
[signature]	CCB/ALE
Allison Waller	Charlotte Chamber
Paul Stark	NCBA
Sandy Sands	WCSR
Nathan Batts	NCBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
TINA GORDON	NC Nurses Assoc.
Meredith Cook	NC DOL
Boyd Cauble	City of Charlotte
Jesse Goodman	DHHS
Joyce Peters	JP Assoc
L C Pearson	MCIC
[illegible]	TWC
[illegible]	TWC
Mike Wa[illegible]	NCAPA
Ashley Broom	NCASA

Pages Attending

DATE: 7 July

COMMITTEE: Commerce 11Am 1027 LB

Sen. Soles

Page Name	Hometown	Sponsoring Senator
Callie Safrit	Chapel Hill	Rand
Kareem Shaw	Riegelwood	Soles
Peter Kenna	Raleigh	Hunt
Patrick Kenna	Raleigh	Hunt
Ethan Grant	Chapel Hill	Kinnard
Parker Adams	Clayton	Rouzer
JR Borders	cornelius	Rucho
Kyri Beasley	Raleigh	Blue
Caroline Ward	Charlotte	Apodaca

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1090
PROPOSED SENATE COMMITTEE SUBSTITUTE H1090-PCS70457-LR-32

Short Title: UI/Severance Modifications. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE DEFINITION OF TOTAL AND PARTIAL UNEMPLOYMENT RELATING TO THE TREATMENT OF SEVERANCE PAY UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If ~~he~~ the individual has payroll attachment but, because of lack of work during the payroll week for which ~~he~~ the individual is requesting the establishment of a benefit year, ~~he~~ the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~ the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If ~~he~~ the individual has no payroll attachment on the date ~~he~~ the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:

1. Totally unemployed, irrespective of job attachment, if ~~his~~ a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce ~~his~~ the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).

2. Partially unemployed, if ~~he~~ the claimant has payroll attachment but because of lack of work during the payroll week for which ~~he~~ the claimant is requesting benefits ~~he~~ the claimant worked less than three customary scheduled

full-time days in the establishment, plant, or industry in which ~~he~~ the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, ~~he~~ the individual is receiving, has received, or will receive as a result of ~~his~~ the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, ~~(iv) severance pay, (v)~~ (iv) separation pay, or ~~(vi)~~(v) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. ~~Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13.~~ Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

e. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was a permanent school employee regularly employed as a full-time substitute during the period of time for which the individual is requesting benefits."

SECTION 2. This act is effective when it becomes law and expires July 1, 2011.

HOUSE BILL 1090:
UI/Severance Modifications

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 26, 2009
Introduced by:	Rep. Wainwright	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1090 would allow a person who is receiving severance pay to be considered unemployed for purposes of collecting unemployment insurance benefits provided that person met the other criteria for determining unemployment.

CURRENT LAW: G.S. 96-8(10) defines what constitutes total (separated) and partial (attached) unemployment. Separated unemployment occurs when an individual is out of work for an indefinite period and no longer has any attachment to the payroll or work force of any employing unit. Attached unemployment occurs when an individual retains an attachment to the payroll and work force of an employer, but works less than three customarily scheduled workdays (or less than 60% of the customarily scheduled work hours) during a payroll week because the employer could not provide full-time work. Attached unemployment is also referred to as a "temporary layoff".

G.S. 96-8(10)c. provides that the following individuals will not be considered to be unemployed, if during the calendar week, the individual receives any of the following as a result to separation from employment:

- Wages in lieu of notice
- Accrued vacation pay
- Terminal leave pay
- Severance pay
- Separation pay (unless the individual is attending an institution of higher education, a secondary school, or an approved vocational, educational or training program)
- Dismissal payments or wages by whatever name.

BILL ANALYSIS: House Bill 1090 amends G.S. 96-8(10) to provide that an individual who receives severance pay may be considered unemployed, provided the individual meets the other criteria for determining unemployment.

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

BACKGROUND: The Social Security Act of 1935 and Chapter 96 of the General Statutes of North Carolina (the Employment Security Law) provide the basic framework for administering the unemployment insurance program in North Carolina. Eligible workers are individuals who (1) lost their jobs through no fault of their own, (2) worked during a specified time period and received a minimum amount of wages during that time period, (3) are able and available for work, and (4) are actively seeking new employment. All benefits and administrative costs of the unemployment insurance program are paid by employers through State Unemployment Tax Act (SUTA) and the Federal Unemployment Tax Act (FUTA) payments. Quarterly revenues from a SUTA and FUTA based on a percentage of each liable employer's payroll provide funds which can be used only to pay unemployment benefits to eligible workers and to administer the unemployment insurance program.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1090

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

H1090-ARC-18 [v.1]

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

Date June 30 ,2009

Senator Dorsett

moves to amend the bill on page 2, line 43, by deleting the phrase "This act is effective when it becomes law" and substituting "This act becomes effective October 1, 2009".

SIGNED Lawrence L. Dorsett
Amendment Sponsor

SIGNED R.C. Soles, Jr
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 32

Short Title:	Employers Must Use Federal E-Verify Program.	(Public)
Sponsors:	Senators Snow; Allran, Apodaca, Atwater, Berger of Franklin, Blake, Boseman, Davis, Goss, Hoyle, Jacumin, McKissick, Nesbitt, Queen, Rand, Swindell, Tillman, and Vaughan.	
Referred to:	Commerce.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT EMPLOYERS IN THIS STATE USE THE FEDERAL E-VERIFY PROGRAM OR A SIMILAR VERIFICATION OF WORK AUTHORIZATION PROGRAM; AND TO APPROPRIATE FUNDS TO ESTABLISH AND SUPPORT A POSITION TO ASSIST IN THE IMPLEMENTATION AND EXECUTION OF THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-99.1. County verification of employee work authorization.**

(a) Each county shall register and participate in the federal work authorization program to verify work authorization information of all new employees.

(b) As used in this section, the term 'federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin."

SECTION 1.(b) Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-169.1. City verification of employee work authorization.**

(a) Each city shall register and participate in the federal work authorization program to verify work authorization information of all new employees.

(b) As used in this section, the term 'federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin."

SECTION 1.(c) Article 2 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-15.2. Contractors must use federal work authorization program.**

(a) No county may enter into a contract for the physical performance of services within this State unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(b) As used in this section, the term 'federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603."

SECTION 1.(d) Article 2 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-12.1. Contractors must use federal work authorization program.**

(a) No city may enter into a contract for the physical performance of services within this State unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(b) As used in this section, the term 'federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603."

SECTION 1.(e) G.S. 143-129 is amended by adding a new subsection to read:

"(i) No contract subject to this section may be awarded by any board or governing body of the State, institution of the State government, or any political subdivision of the State, unless the contractor registers and participates in the federal work authorization program to verify information of all new employees. As used in this subsection, the term 'federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603."

SECTION 2.(a) Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 1.

"Various Provisions Relating to Aliens."

SECTION 2.(b) G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of Chapter 64 of the General Statutes, as created by this section.

SECTION 2.(c) Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 2.

"Employment of Unauthorized Aliens.

"**§ 64-10. Definitions.**

The following definitions apply in this Article:

(1) Agency. – Any agency, department, board, or commission of this State, a county, or city that issues a license for purposes of operating a business in this State.

(2) Employ. – Hiring an employee after January 1, 2010.

(3) Employee. – Any person who provides services or labor for an employer in this State for wages or other remuneration. This term does not include an independent contractor.

(4) Employer. – Any individual or type of organization that transacts business in this State, that has a license issued by an agency in this State, and that employs one or more employees in this State. In the case of an independent contractor, the term means the independent contractor and does not mean the person or organization that uses the contract labor.

(5) Federal work authorization program. – Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603.

(6) Independent contractor. – Any individual or entity that carries on an independent business, that contracts to do a piece of work according to the individual's or entity's own means and methods and that is subject to control only as to results. Whether an individual or entity is an independent contractor is to be determined on a case-by-case basis through various factors including whether the individual or entity:

a. Supplies the tools or materials.

b. Makes services available to the general public.

c. Works or may work for a number of clients at the same time.

d. Has an opportunity for profit or loss as a result of labor or service provided.

e. Invests in the facilities for work.

f. Directs the order or sequence in which the work is completed.

g. Determines the hours when the work is completed.

(7) Intentionally. – With respect to a result or to particular conduct, acting with the objective of causing that result or engaging in that conduct.

(8) Knowingly employ an unauthorized alien. – The actions described in 8 U.S.C. § 1324a. This term shall be interpreted consistently with any applicable federal rules and regulations.

(9) License. – Any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purpose of operating a business in this State. This term does not include any professional license.

(10) Social security number verification service. – The program administered by the Social Security Administration to verify the social security numbers of existing workers, or any of its successor program.

(11) Unauthorized alien. – An alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. § 1324a(h)(3).

"**§ 64-11. Loss of business licenses for violations of federal immigration law.**

Any agency or commission that issues a license shall, upon a showing of clear and convincing evidence, summarily revoke any license issued to any entity that has violated any federal immigration law that relates to the employment of unauthorized aliens. If any agency makes a finding to revoke a license pursuant to this section, no other agency shall be required to make a similar finding in order to revoke a license issued by it.

"**§ 64-12. Knowingly employing unauthorized alien prohibited; penalties.**

(a) An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract, or other independent contractor agreement to obtain the labor of an alien in this State, the employer knowingly contracts with an unauthorized alien

or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

(b) The Attorney General shall prescribe a complaint form for a person to allege a violation of subsection (a) of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the Attorney General or county attorney shall investigate whether the employer has violated subsection (a) of this section. If a complaint is received but is not submitted on a prescribed complaint form, the Attorney General or county attorney may investigate whether the employer has violated subsection (a) of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The Attorney General or county attorney shall not investigate complaints that are based solely on race, color, or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating the complaint. When investigating a complaint, the Attorney General or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a Class 2 misdemeanor.

(c) If, after an investigation, the Attorney General or county attorney determines that the complaint is not false and frivolous:

(1) The Attorney General or county attorney shall notify the United States Customs and Immigration Enforcement of the unauthorized alien.

(2) The Attorney General or county attorney shall notify local law enforcement agencies of the unauthorized alien.

(3) The Attorney General shall notify the appropriate county attorney to bring an action pursuant to subsection (d) of this section if the complaint was originally filed with the Attorney General.

(d) An action for a violation of subsection (a) of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection (a) that occurs before January 1, 2010. A second violation of this section shall be based only on an unauthorized alien who is employed by the employer after an action has been brought for a violation of subsection (a) of this section.

(e) For a finding of a violation of subsection (a) of this section:

(1) For a first violation as described in subdivision (3) of this subsection, the court:

a. Shall order the employer to terminate the employment of all unauthorized aliens.

b. Shall order the employer to be subject to a three-year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

c. Shall order the employer to file a signed sworn affidavit with the county attorney within three business days after the order is issued.

The affidavit shall state the employer has terminated the employment of all unauthorized aliens in this State and that the employer will not intentionally or knowingly employ an unauthorized alien in this State. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed, sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed, sworn affidavit with the county attorney. Notwithstanding any other provision of law, on filing of the affidavit, the suspended licenses shall be reinstated immediately by the appropriate agencies for the purposes of this subdivision. The licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other provision of law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the Attorney General, and the Attorney General shall maintain the copy pursuant to subsection (f) of this section.

d. May order the appropriate agencies to suspend all licenses described in sub-subdivision c. of this subdivision that are held by the employer for a period not to exceed 10 business days. The court shall base its decision to suspend under this sub-subdivision on any evidence or information submitted to it during the action for violation of this section and shall consider the following factors, if relevant:

1. The number of unauthorized aliens employed by the employer.
2. Any prior misconduct by the employer.
3. The degree of harm resulting from the violation.
4. Whether the employer made good faith efforts to comply with any applicable requirements.
5. The duration of the violation.
6. The role of the directors, officers, or principals of the employer in the violation.
7. Any other factors the court deems appropriate.

(2) For a second violation as described in subdivision (3) of this subsection, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other provision of law, the appropriate agencies shall immediately revoke the licenses.

(3) The violation shall be considered:

a. A first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection.

b. A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection.

(f) The Attorney General shall maintain copies of court orders that are received pursuant to subsection (e) of this section and shall maintain a database of the employers and business locations that have a first violation of subsection (a) of this section and make the court orders available on the Attorney General's Web site.

(g) On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 U.S.C. § 1373(c). The federal government's determination creates a rebuttable presumption concerning the employee's legal status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. § 1373(c).

(h) For the purposes of this section, proof of verifying the employment authorization of an employee through the federal work authorization program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien.

(i) For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. For purposes of this subsection, an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b) notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the requirements, so long as there is a good faith attempt to comply with the requirements.

"**§ 64-13. Article does not require action that is contrary to federal or State law.**

This Article shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or State law.

"**§ 64-14. Employers must use federal work authorization program.**

After December 31, 2009, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the federal work authorization program. Alternatively, verification may be made through a third party on behalf of an employer where permitted by federal law.

"**§ 64-15. Discharge of authorized employee while employer simultaneously employs an unauthorized alien is an unfair trade practice.**

The discharge of any United States citizen or permanent resident alien employee by an employer of this State, who, on the date of the discharge, employed an unauthorized alien, shall be an unfair trade practice as defined in G.S. 75-1.1, and the discharged employee shall have a right of action under G.S. 75-16."

SECTION 3. There is appropriated from the General Fund to the Office of the Attorney General of the Department of Justice the sum of eighty-three thousand dollars ($83,000) for the 2009-2010 fiscal year and the sum of eighty-three thousand dollars ($83,000) for the 2010-2011 fiscal year to establish and support a full-time attorney to assist in the implementation and execution of this act. Specifically, the attorney shall be responsible for acting as a liaison with the United States Department of Homeland Security and other agencies regarding the federal work authorization program, advising the Attorney General regarding this act, assisting employers to comply with this act, and assisting the Attorney General with enforcing this act.

SECTION 4. Section 3 of this act becomes effective on July 1, 2009. The remainder of this act becomes effective January 1, 2010.

SENATE BILL 32:
Employers Must Use Federal E-Verify Program

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 29, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***SB32 would create a number of requirements for cities, counties, and State agencies regarding the verification of legal work status to work for employees. These requirements would include:***

- ***Requiring cities and counties to use the federal work authorization program (E-verify) to verify work authorization information for all new employees.***
- ***Prohibit cities and counties from contracting with a contractor unless the contractor uses E-verify to verify work authorization information for all of the contractors' employees.***
- ***Prohibit the State and its agencies from entering into contracts for construction or repair work over $500,000 with a contractor unless the contractor uses E-verify to verify work authorization information for all of the contractors' employees.***

The bill would also create Article 2 of Chapter 64 regarding the employment by private employers of unauthorized aliens. The following provisions would apply:

- ***After December 31, 2009, all employers would be required to verify the employment eligibility of new hires using E-verify or, alternatively, using a third party to verify employment eligibility as provided by federal law.***
- ***Prohibit employers that transact business in North Carolina from knowingly employing an unauthorized alien. This prohibition would extend to subcontracting and independent contractor situations if the employer knows an unauthorized alien is being used to perform the work.***
- ***The Attorney General or county attorneys would investigate alleged violations based on both sworn and anonymous complaints. Complaints based solely on race, color or national origin would not be investigated. The investigation would be limited to verification by local law enforcement of the work authorization of the alleged unauthorized alien. No State or local official would independently make a final determination of legal work status.***
- ***Actions for violations would be brought by the county attorney of the county where the violation occurred, but must be based upon a determination by the federal government that the employee is an unauthorized alien.***
- ***If a court determined that an employer knowingly employed an unauthorized alien after January 1, 2010, the court must order the following sanctions:***

  For a 1st offense - the employer must fire the unauthorized alien, report quarterly for three years on each new employee hired, and sign a sworn statement that the employer has terminated the employment of the unauthorized alien. If the employer does not file the affidavit within 3 days of the entry of judgment, the court shall order all business licenses and permits related to the employer be suspended until the employer submits the affidavit. The

court may order all business licenses and permits related to the employer be suspended for 10 days based upon the severity of the 1st violation.

For a 2nd offense – the court shall order all business licenses and permits related to the employer be revoked.

- ***Create a rebuttable presumption for employers who use E-verify to verify work authorization that the employer has not knowingly employed an unauthorized alien.***
- ***Make it an unfair and deceptive trade practice for an employer to discharge any U.S. citizen or permanent resident alien employee if on that same date, the employer employed an unauthorized alien. The discharged employee could bring a civil suit and receive treble damages.***

The following definitions would apply to the Article:

- ***"Employer" means any individual or organization that has a license issued by an agency of this State and employs one or more employees.***
- ***"Employee" means as any person who provides services or labor and "Employ" means hiring an employee after January 1, 2010.***
- ***"License" means "any agency permit, certificate, approval, registration, or charter that is required by law and that is issued by the agency for the purpose of operating a business in this State." It specifically excludes professional licenses.***

The bill also appropriates $83,000 for the 2009-2010 and 2010-2011 fiscal years to the North Carolina Department of Justice to create an attorney position to assist with implementation of the act.

CURRENT LAW:[1] Federal law makes it illegal to employ an alien knowing the alien is an unauthorized alien with respect to the employment and requires that employers verify the employment eligibility of employees hired to work in the United State by filling out a Form I-9 for each employee.[2] This form contains an attestation by the employee that he or she is eligible to work in the U.S. The form also contains a statement that the employer has examined statutorily enumerated documents that demonstrate that the employee is eligible for employment and that the employee presents himself or herself to be eligible for employment.

E-verify is a voluntary federal Internet-based program that allows employers to verify the employment eligibility of new employees online. To use it, employers must register with the appropriate federal agency and enter into a memorandum of understanding. G.S. 126-7.1(f) currently requires each State agency, department, institution, university, community college and local education agency to use the E-verify program regarding each individual's legal status or authorization to work in the United States after hiring the individual.

Federal law preempts almost all matters related to the unlawful employment of aliens. The Immigration Reform and Control Act of 1986 ("IRCA") preempts "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit, or refer for a fee for employment, unauthorized aliens." An Arizona law after which SB32 is modeled was recently upheld by the 9th Circuit Court of Appeals as being permissible and not preempted by "IRCA".[3]

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[1] This summary of the current law is based substantially on an article written by Ben Stanley of the Bill Drafting Division. "Preemption Issues Arising from State and Local Laws Mandating Use of the Federal E-Verify Program, March 2008, *The Public Servant,* published by the North Carolina Government and Public Sector Section.

[2] 8 U.S.C. 1324a.

[3] Chicanos Por La Causa, Inc. v. Napolitano, 544 F.3d 976 (9th Cir. 2008).

E-Verify Fact Sheet

- E-Verify is a Web-based system that electronically verifies whether or not an individual can legally work in the United States. It is free, easy to use, and provides results to employers within seconds.

- E-Verify functions as a partnership between the Department of Homeland Security (DHS) and the Social Security Administration and is overseen by U.S. Citizenship and Immigration Services (USCIS), now including naturalization data.

- E-Verify gives employers the ability to electronically compare information in the Social Security Administration (SSA) database and the DHS database with the information an employee submits on his or her Form I-9 (the standard form currently used to verify employment eligibility.

- E-Verify is currently used on a voluntary basis by approximately 64,000 employers nationwide with more than 4,000 new employers enrolling each month. The system has the capacity to process 25 million queries per year and is currently being updated and expanded.

- E-Verify has allowed participating employers to successfully match 93 percent of new hires to DHS and SSA database information. Of the remaining 7 percent that were not matched, less than one percent of those employees contested the results.

- E-Verify currently requires participating employers to operate under a Memorandum of Understanding (MOU) which outlines fair and proper methods of using the system. These guidelines exist to protect employees from discriminatory hiring practices.

- E-verify gives employers the tools they need to follow our nation's immigration laws and to avoid the penalties that result from hiring illegal aliens.

Employee Protection Provision in E-Verify

- Currently, employers must post a notice informing employees of their use of E-Verify. Roughly 35,000 employers are voluntarily enrolled in the program nationwide.

- E-Verify must be used for all hires regardless of national origin or citizenship status. It may not be used selectively.

- E-Verify must be used only after hire and after completion of the Form I-9. Employers may not pre-screen applicants through E-Verify.

- If an employee receives an information mismatch from their Form I-9 and SSA and DHS databases, that employer must promptly provide the employee with information abut hot to challenge the information mismatch.

- Employers may not take any adverse action against an employee because he/she contests the information mismatch. This includes firing, suspending,, withholding pay or training, or otherwise infringing upon his/her employment.

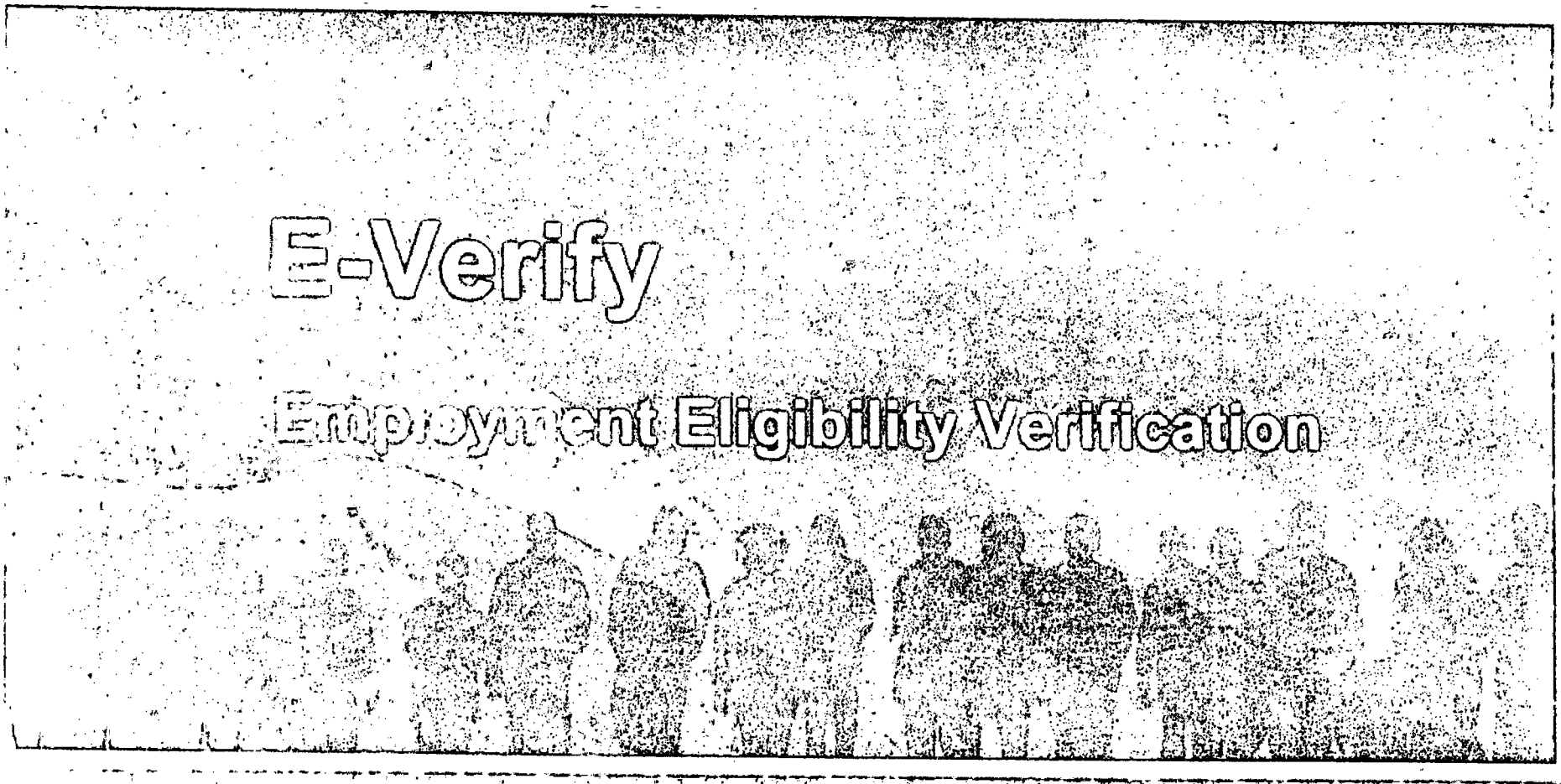
- Currently, the employee must be given eight federal government work days to contact the appropriate federal agency to contest the information mismatch.

E-Verify™

U.S. Citizenship and Immigration Services

E-Verify

Employment Eligibility Verification



E-Verify

- E-Verify (formerly known as the Basic Pilot Program)
- Mandated by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
- Partnership between the Department of Homeland Security (DHS) and Social Security Administration (SSA)
- Provides a means for participating employers to verify the employment eligibility status of newly-hired employees

E-Verify

U.S. Citizenship and Immigration Services

E-Verify Program Goals

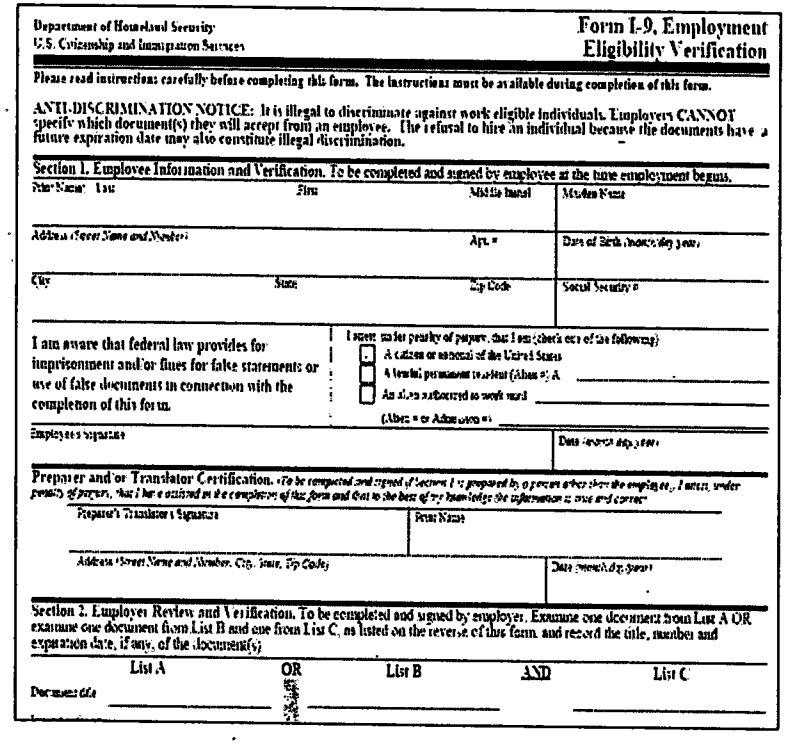
- **Reduce** unauthorized employment
- **Minimize** verification-related discrimination
- Be **quick and non-burdensome** to employers 3-5 seconds
- **Protect** civil liberties and employee privacy

E-Verify

U.S. Citizenship and Immigration Services

E-Verify: How it Works

- Users submit information provided on the **Form I-9**
- System queries databases of:
  - Social Security Administration
  - Department of Homeland Security



Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

First Name Last | First | Middle Initial | Maiden Name

Address (Street Name and Number) | Apt. # | Date of Birth (month/day/year)

City | State | Zip Code | Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
- A citizen or national of the United States
- A lawful permanent resident (Alien #) A
- An alien authorized to work until (Alien # or Admission #)

Employee's Signature | Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee. I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

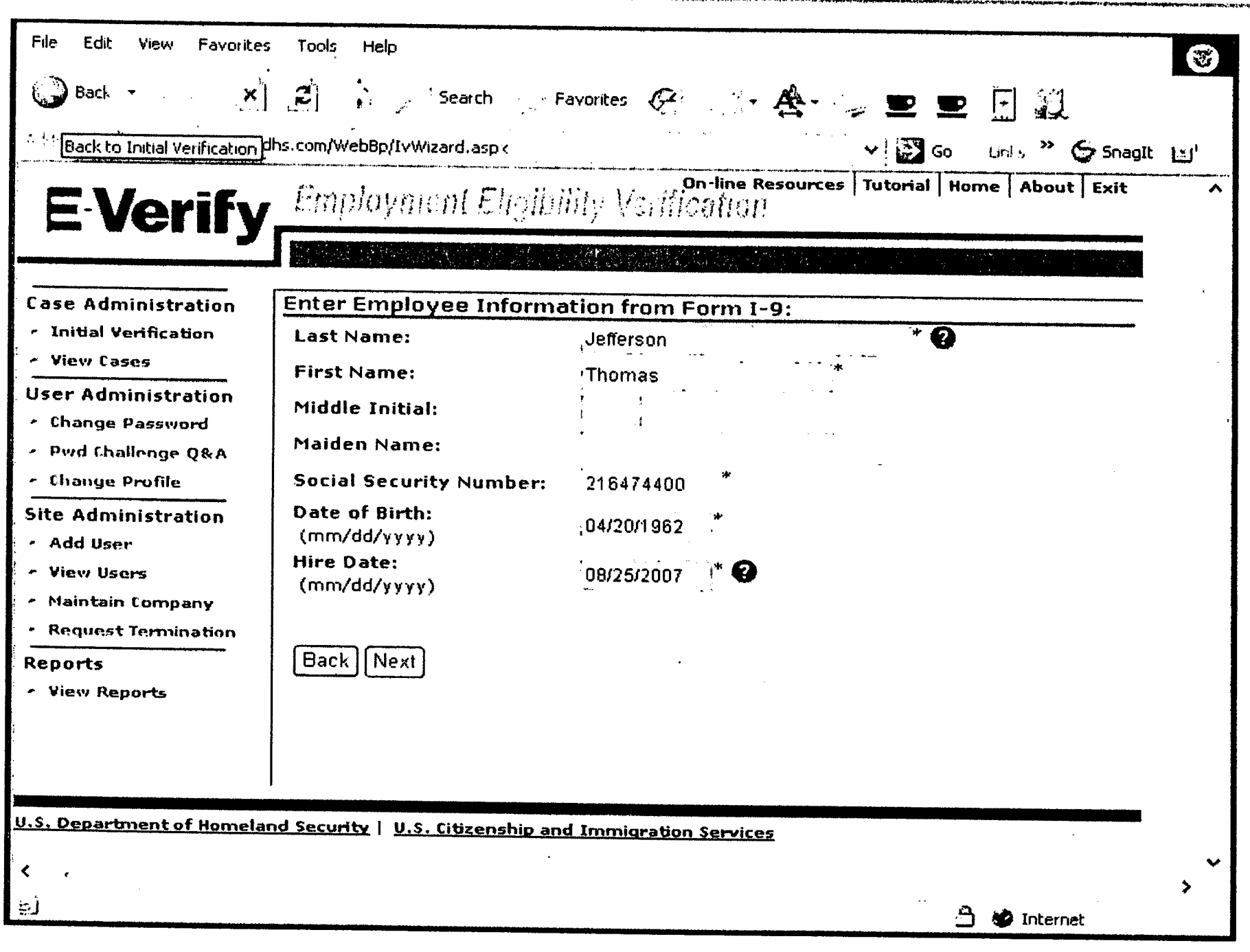
Preparer's/Translator's Signature | Print Name

Address (Street Name and Number, City, State, Zip Code) | Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A | OR | List B | AND | List C

Document title


File Edit View Favorites Tools Help
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SnagIt
On-line Resources | Tutorial | Home | About | Exit
E-Verify
Employment Eligibility Verification
Case Administration
Initial Verification
View Cases
User Administration
Change Password
Pwd Challenge Q&A
Change Profile
Site Administration
Add User
View Users
Maintain Company
Request Termination
Reports
View Reports
Enter Employee Information from Form I-9:
Last Name: Jefferson *
First Name: Thomas *
Middle Initial:
Maiden Name:
Social Security Number: 216474400 *
Date of Birth: (mm/dd/yyyy) 04/20/1962 *
Hire Date: (mm/dd/yyyy) 08/25/2007 *
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U.S. Department of Homeland Security | U.S. Citizenship and Immigration Services
Internet

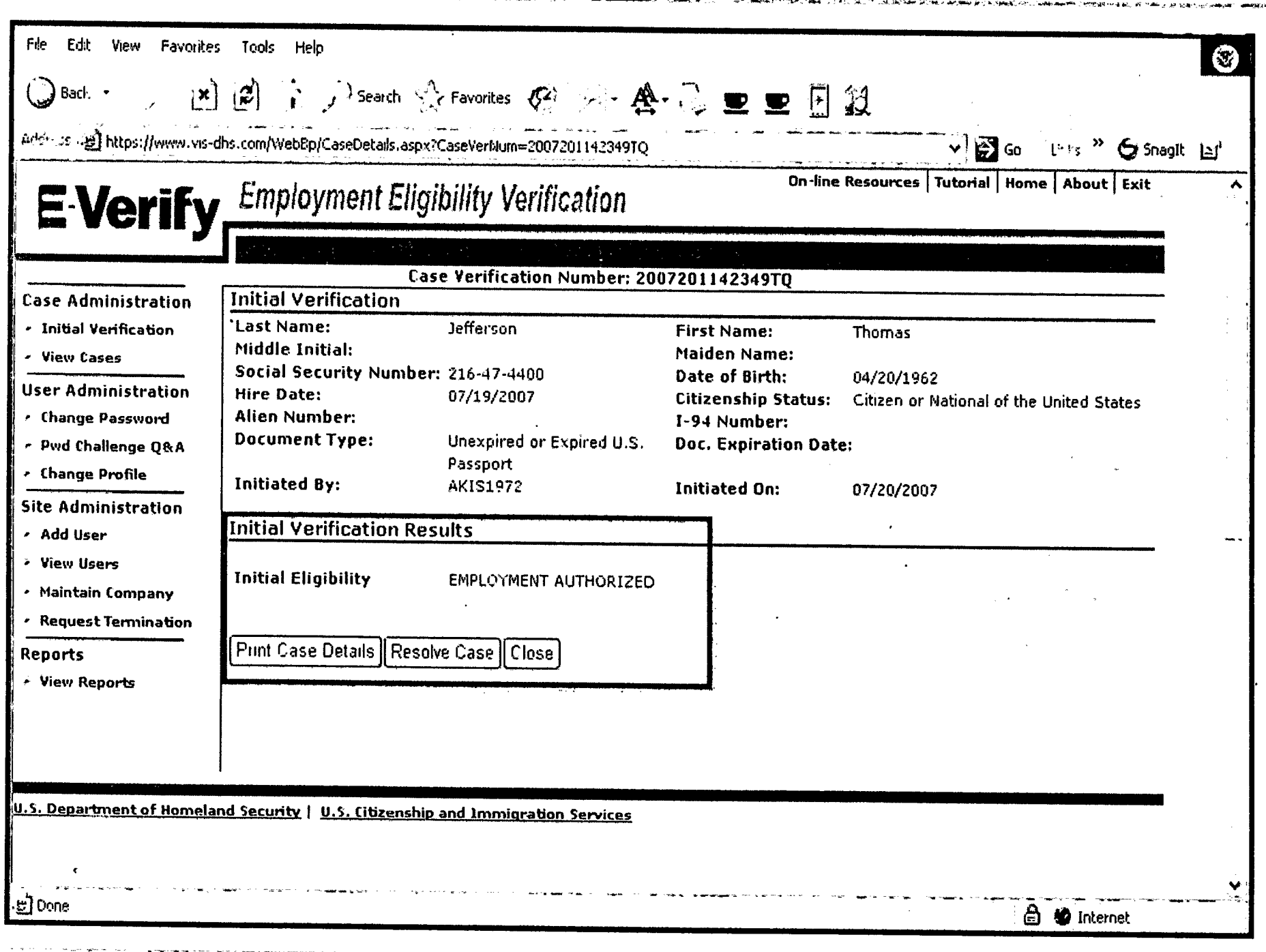
E-Verify

U.S. Citizenship and Immigration Services

E-Verify: How it Works (Continued)

Initial verification will return one of three results within seconds:

- **Employment Authorized**
  - The employee is authorized to work.
- **SSA Tentative Nonconfirmation**
  - There is an information mismatch with SSA.
- **DHS Verification in Process**
  - DHS will usually respond within 24 hours with either an Employment Authorized or DHS Tentative Nonconfirmation.

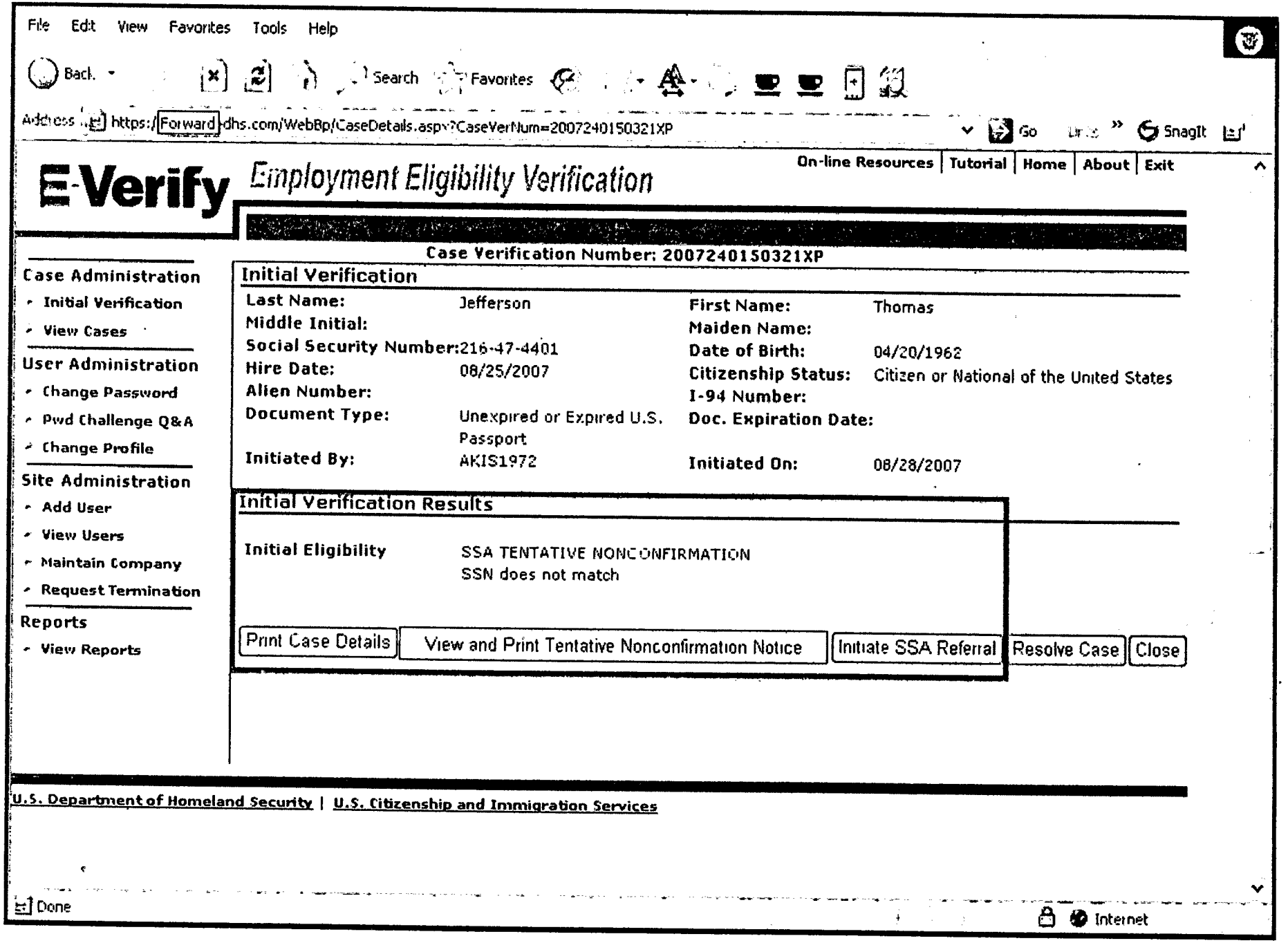

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Initial Verification
View Cases
User Administration
Change Password
Pwd Challenge Q&A
Change Profile
Site Administration
Add User
View Users
Maintain Company
Request Termination
Reports
View Reports
Initial Verification
Last Name: Jefferson
First Name: Thomas
Middle Initial:
Maiden Name:
Social Security Number: 216-47-4400
Date of Birth: 04/20/1962
Hire Date: 07/19/2007
Citizenship Status: Citizen or National of the United States
Alien Number:
I-94 Number:
Document Type: Unexpired or Expired U.S. Passport
Doc. Expiration Date:
Initiated By: AKIS1972
Initiated On: 07/20/2007
Initial Verification Results
Initial Eligibility EMPLOYMENT AUTHORIZED
Print Case Details
Resolve Case
Close
U.S. Department of Homeland Security | U.S. Citizenship and Immigration Services
Done
Internet

E-Verify

U.S. Citizenship and Immigration Services

E-Verify: Case Resolution

- If **Employment Authorized**, the employer records the system-generated verification number on the Form I-9.
- If **Tentative Nonconfirmation**, the employee can contest the finding and then:
  - Social Security Administration mismatches are resolved with SSA
  - Non-citizen status mismatches are resolved with DHS
- If the employee *chooses not to contest*, it is considered a **Final Nonconfirmation** and the employer may terminate the employee and resolve the case.

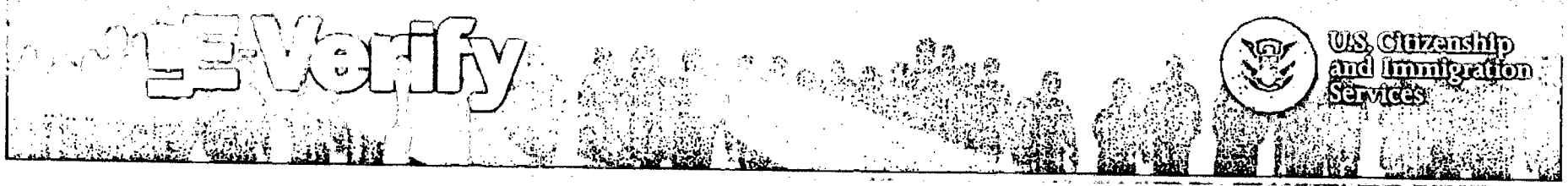

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E-Verify Employment Eligibility Verification
On-line Resources | Tutorial | Home | About | Exit
Case Verification Number: 2007240150321XP
Case Administration
Initial Verification
View Cases
User Administration
Change Password
Pwd Challenge Q&A
Change Profile
Site Administration
Add User
View Users
Maintain Company
Request Termination
Reports
View Reports
Initial Verification
Last Name: Jefferson
First Name: Thomas
Middle Initial:
Maiden Name:
Social Security Number: 216-47-4401
Date of Birth: 04/20/1962
Hire Date: 08/25/2007
Citizenship Status: Citizen or National of the United States
Alien Number:
I-94 Number:
Document Type: Unexpired or Expired U.S. Passport
Doc. Expiration Date:
Initiated By: AKIS1972
Initiated On: 08/28/2007
Initial Verification Results
Initial Eligibility
SSA TENTATIVE NONCONFIRMATION
SSN does not match
Print Case Details
View and Print Tentative Nonconfirmation Notice
Initiate SSA Referral
Resolve Case
Close
U.S. Department of Homeland Security | U.S. Citizenship and Immigration Services
Done
Internet

E-Verify

U.S. Citizenship and Immigration Services

Tentative Nonconfirmation (TNC)

- **Inform** the employee and **print and review** the TNC notice with the employee.
- The employee chooses to "**contest**" or "**not contest**" the TNC.
- **Refer** the employee to the appropriate agency if the TNC is contested.
- The employee has **8 Federal Government workdays** from the date of referral to visit or call the appropriate agency to resolve the discrepancy.

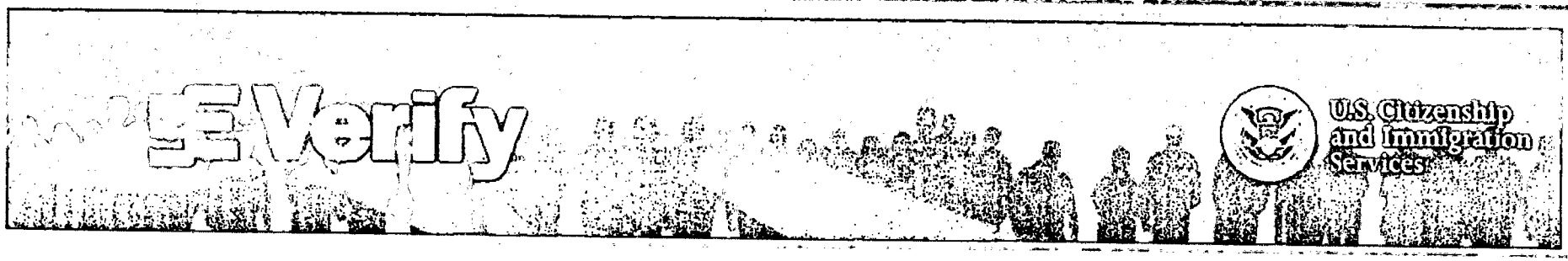


TNC Case Resolution

Employee continues to work while the case is being resolved.

Once the employee resolves the discrepancy in his or her records, they should inform the employer.

With both an **SSA TNC** and a **DHS TNC**, a response is automatically sent to the employer through the system. The employer should check E-Verify periodically for the response.



TNC Case Resolution *(Continued)*

- The employer should check the system periodically for a response from SSA or DHS.
- The employer will receive one of three results:
  - **Employment Authorized**
  - **Final Nonconfirmation**
  - **Review and Update Employee Data then Resubmit**
- The employer then resolves the case in E-Verify.

E-Verify

U.S. Citizenship and Immigration Services

Employer Responsibilities

- E-Verify **can ONLY be used to verify NEW hires**, and must be initiated after the employee accepts the position (hire date) and within 3 days of the employee's actual start date.
- E-Verify procedures **must be applied to ALL new hires**, regardless of citizenship status.

E-Verify

U.S. Citizenship and Immigration Services

Employer Responsibilities

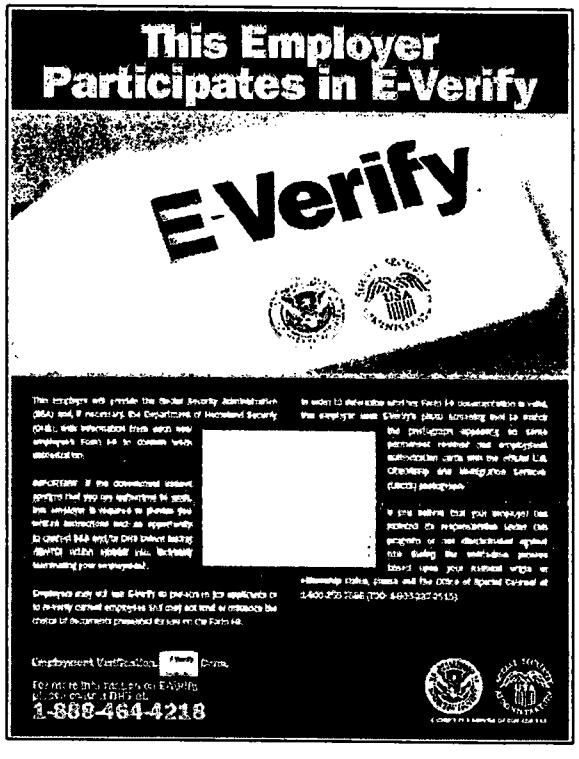
- Employer must **post a notice** in an area visible to prospective employees that it is a **E-Verify Participant**.

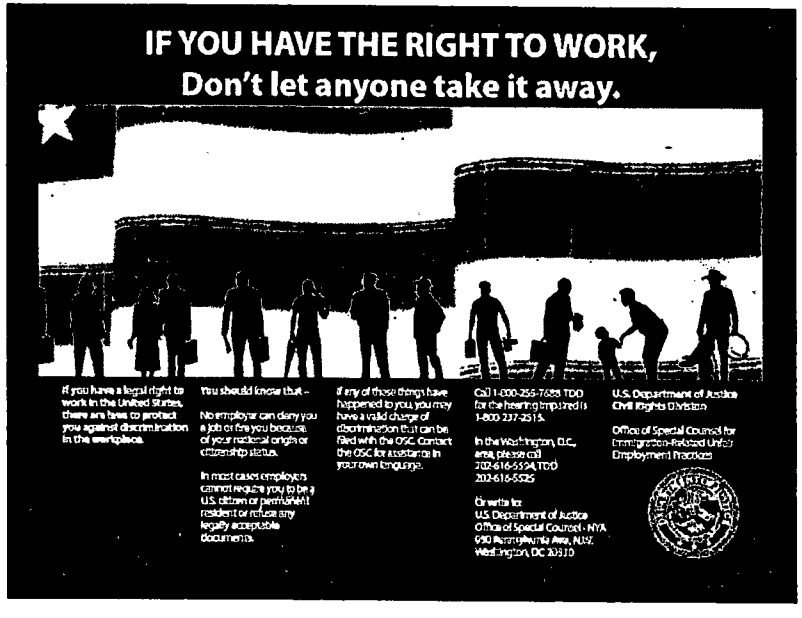
- Employer must **post** an **Anti-Discrimination Notice** issued by the Office of Special Counsel for Immigration – Related Unfair Employment Practices, Department of Justice (DOJ) in an area visible to prospective employees.

E-Verify

U.S. Citizenship and Immigration Services

E-Verify and DOJ-OSC Posters





E-Verify

U.S. Citizenship and Immigration Services

Employee Rights

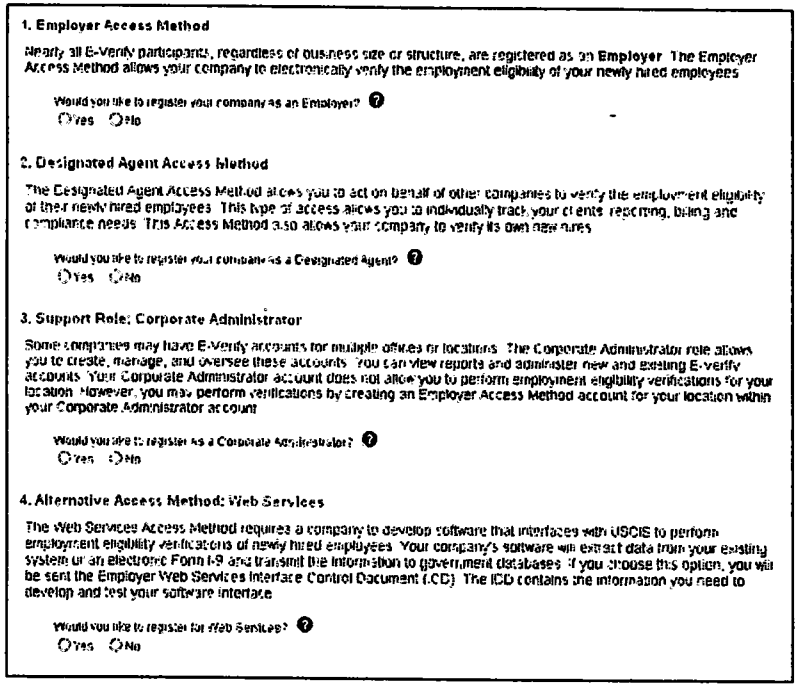
- The employee has the right to contest or not to contest a Tentative Nonconfirmation (TNC) from SSA or DHS.
- Employees who believe that they have been subjected to discrimination based upon their national origin or citizenship or immigration status with respect to hiring, firing, recruitment or referral for a fee, through an employer's use of E-Verify, or when completing the Form I-9 should call the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-7688 (TDD: 1-800-237-2515) for assistance.

E-Verify

U.S. Citizenship and Immigration Services

E-Verify: Registration

- Register online:
  - www.dhs.gov/E-Verify
- Select access method:
  - Depending on the answer(s) selected, one of three access methods will be established:
    - **Employer**
    - **Designated Agent**
    - **Corporate Administrator**



1. Employer Access Method

Nearly all E-Verify participants, regardless of business size or structure, are registered as an **Employer**. The Employer Access Method allows your company to electronically verify the employment eligibility of your newly hired employees.

Would you like to register your company as an Employer?
○Yes ○No

2. Designated Agent Access Method

The Designated Agent Access Method allows you to act on behalf of other companies to verify the employment eligibility of their newly hired employees. This type of access allows you to individually track your clients' rescreening, billing and compliance needs. This Access Method also allows your company to verify its own new hires.

Would you like to register your company as a Designated Agent?
○Yes ○No

3. Support Role: Corporate Administrator

Some companies may have E-Verify accounts for multiple offices or locations. The Corporate Administrator role allows you to create, manage, and oversee these accounts. You can view reports and administer new and existing E-Verify accounts. Your Corporate Administrator account does not allow you to perform employment eligibility verifications for your location. However, you may perform verifications by creating an Employer Access Method account for your location within your Corporate Administrator account.

Would you like to register as a Corporate Administrator?
○Yes ○No

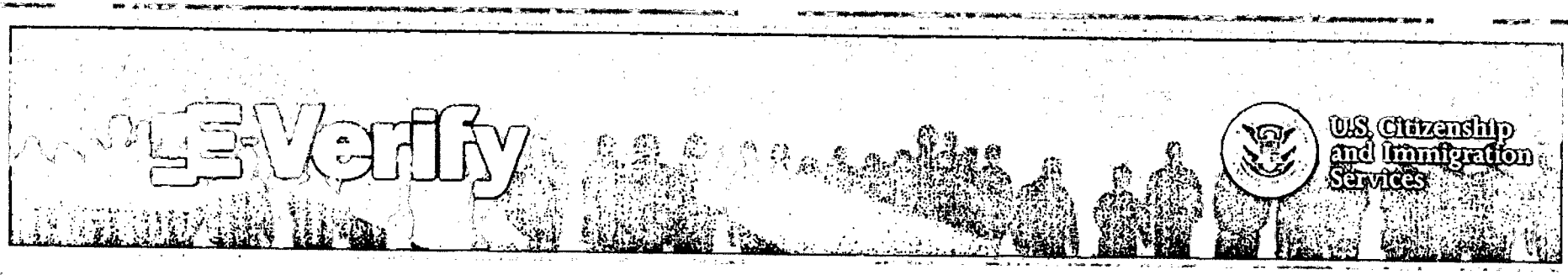
4. Alternative Access Method: Web Services

The Web Services Access Method requires a company to develop software that interfaces with USCIS to perform employment eligibility verifications of newly hired employees. Your company's software will extract data from your existing system or an electronic Form I-9 and transmit the information to government databases. If you choose this option, you will be sent the Employer Web Services Interface Control Document (ICD). The ICD contains the information you need to develop and test your software interface.

Would you like to register for Web Services?
○Yes ○No

E-Verify: Access Methods

- **Employer**
  - Nearly all E-Verify participants, regardless of business size or structure, are registered as an **Employer**. The Employer Access Method allows your company to electronically verify the employment eligibility of your newly hired employees.
  - Click "Yes" to question 1 and "No" to questions 2, 3, and 4.
  - Most Common



E-Verify: Access Methods

- **Designated Agent**
  - Only select this registration type if ***your company*** performs verification queries for a client company (i.e. Outsourcing services, Third-Party Payroll Services, etc.)
  - Check "Yes" to question 2 and "No" to questions 1, 3, and 4.
  - Least Common

E-Verify: Access Methods

Corporate Administrator

- Some companies may have E-Verify accounts for multiple offices or locations. The **Corporate Administrator** role allows you to create, manage, and oversee these accounts. You can view reports and administer new and existing E-Verify accounts.
- Your Corporate Administrator account does ***NOT*** allow you to perform employment eligibility verifications.
- Click "Yes" to question 3 and "No" to questions 1, 2, and 4.

E-Verify: Registration

- Electronically sign a **Memorandum of Understanding** (MOU) with DHS and SSA.
- User Name, Password, and E-Verify Web Address will be **e-mailed** to registrant within 48 hours.

E-Verify: Registration (Continued)

- Download and read the E-Verify **User Manual**.
- Complete an **online tutorial** before performing queries.
- Download and print the **E-Verify Participation Poster** and the Office of Special Council **Anti-Discrimination Poster**.

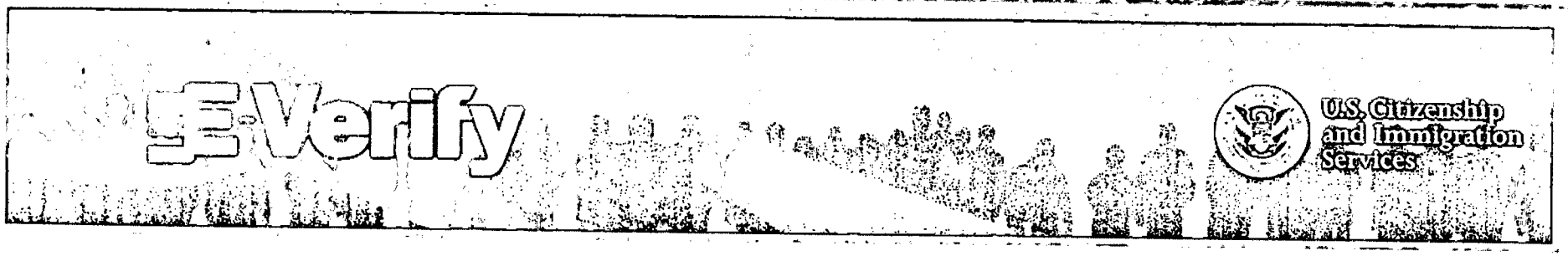


Photo Screening Tool

The E-Verify photo tool currently enables employers to match the photo on an employee's Employment Authorization Document (EAD) or Permanent Resident Card ("green card") to the photo that USCIS has on file for that employee.

Assist employers to detect instances of document fraud.

Photo tool was incorporated into E-Verify for all employers in September 2007.

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Back Search Favorites

https://www.vis-dhs.com/WebBp/CaseDetails.aspx?CaseVerNum=2007240160205MM

Go SnagIt

E-Verify Employment Eligibility Verification

On-line Resources | Tutorial | Home | About | Exit

Case Verification Number: 2007240160205MM

Case Administration
- Initial Verification
- View Cases

User Administration
- Change Password
- Pwd Challenge Q&A
- Change Profile

Site Administration
- Add User
- View Users
- Maintain Company
- Request Termination

Reports
- View Reports

Identity Verification

Does the photograph below match the photograph on the I-766 document provided by the employee?

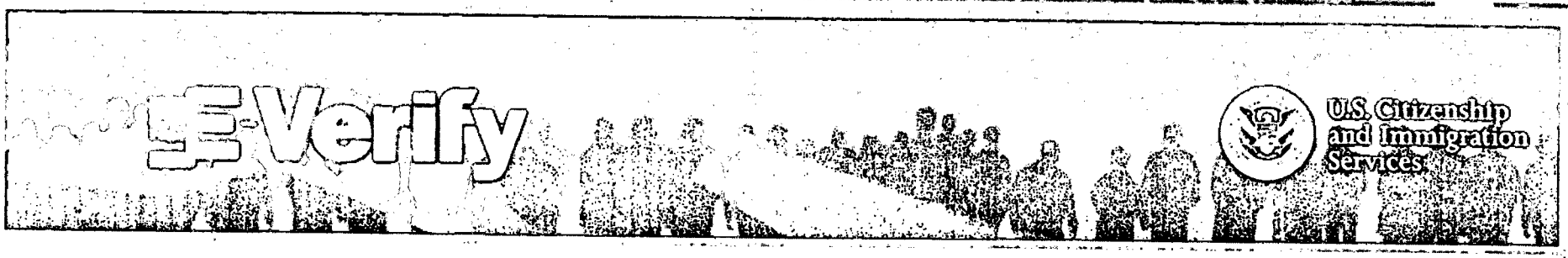
- ○ Yes
- ○ No
- ○ Cannot be determined (specify why)



Click to Enlarge

Next

Internet



E-Verify Usage Statistics

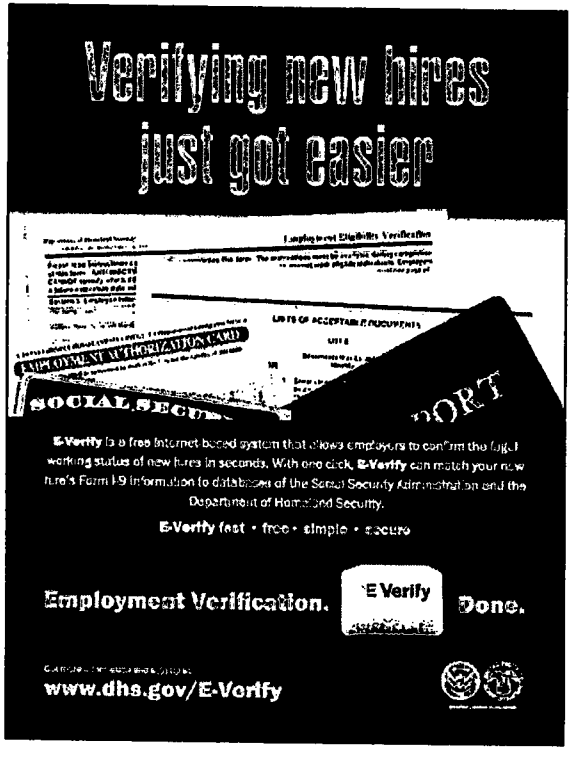
- Over 70,000 participating employers
- Over 1,500 NC employers representing 5,500 worksites
- Over 4 million queries run in FY 2008
- 94.2% of verification queries are automatically verified
- Top Industries Using E-Verify:
  - Doctors, Lawyers, CPA
  - Administrative and Support Services
  - Professional, Scientific, and Technical services
  - Food Services, Clothing and Accessories Stores

E-Verify

U.S. Citizenship and Immigration Services

E-Verify Improvements

- Reducing incidence of mismatches.
- Developing a marketing plan to recruit employers.
- Developing Monitoring & Compliance functions.





State Legislation

States that have enacted legislation that **mandates** the use of E-Verify:

Arizona, Arkansas, Colorado, Georgia, Idaho, Minnesota, Mississippi, North Carolina, Oklahoma, Pennsylvania, Tennessee, Rhode Island, South Carolina, and Utah

States that have **legislation pending**

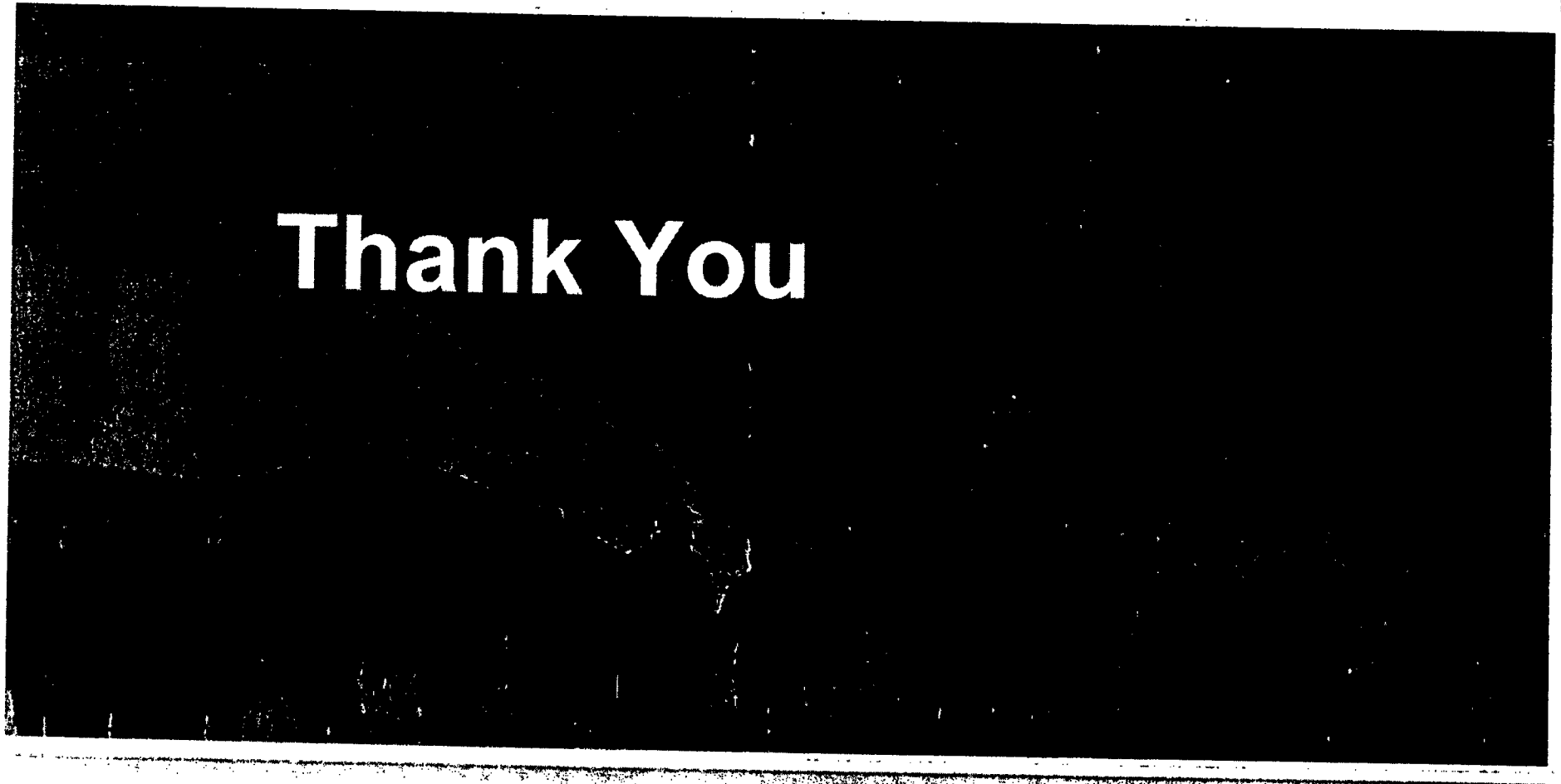
Illinois, Indiana, Iowa, North Carolina, Rhode Island, Kansas, California, Minnesota, Pennsylvania, Tennessee, West Virginia, Colorado, and Florida

For More Information

- General questions about E-Verify call (888) 464-4218 or visit;
- E-Verify Website: www.dhs.gov/E-Verify

E-Verify™

U.S. Citizenship and Immigration Services



SENATE COMMERCE COMMITTEE
Tuesday, July 14, 2009 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on July 14, 2009, in Room 1027 of the Legislative Building. Twenty-three members of the committee were present. Senator R.C. Soles presided. Will Rhinehart, Parker Robinson, and Spence Newcombe, all of Gastonia, Powell Eddins of Raleigh, Graison McKissick of Durham, and Katia Martinez of Cary served as pages.

H.B. 667 – 2009 Viticulture/Enology Act.

Representative Gibson was recognized to explain the bill. Senator Vaughan moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS amends the State's ABC Laws to create an exemption for accredited community colleges, colleges, and universities for the manufacture, possession, and consumption of alcoholic beverages for the purpose of conducting scientific, chemical, pharmaceutical, mechanical, industrial, and educational research; allows the holder of a viticulture/enology course authorization to sell unfortified wine at a non-campus location; allows wine producers and wineries holding an off-premises unfortified winery permit to sell unfortified wine at their premises during business hours and allow wineries to sell their wine at an additional location in the county under specified conditions; and amends the definition of sports club to include certain equestrian centers. The Reverend Mark Creech, director of the Christian Action League, was recognized to speak in opposition to the bill. Senator Rucho moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1228 – ABC Rules/Private Clubs.

Representative Gibson explained the bill which clarifies the authority of the ABC Commission to adopt rules concerning private clubs. The Reverend Creech spoke in opposition to the bill. Dennis Edwards, CEO of the Greater Raleigh Convention Center, and Jon Carr, a lobbyist for the NC Restaurant and Lodging Association, were recognized to speak in favor of the bill. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

H.B. 1289 – No Lottery at Check Cashing Sites.

Representative Harrison and Representative Samuelson were recognized to explain the bill. Senator Blue moved to adopt the PCS for discussion and the motion carried. The PCS forbids contracting as lottery retailers businesses who primarily cash checks, drafts, or money orders and prohibits any State lottery advertising or sponsorship related to high school sports or high school sporting events. Tom Shaheen, director of the NC Education Lottery Commission, was recognized to express concerns about the bill and answer questions. Senator Jacumin moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1353 – No Ordinances/Deeds May Stop Clotheslines.

Representative Harrison explained the bill which provides that city ordinances and county ordinances cannot prohibit or have the effect of prohibiting the installation of clotheslines not visible by a person on the ground and not facing areas open to common or public access. Steve Rose, a staff attorney with the Research Division, was recognized to answer questions. Senator Berger moved for a favorable report and the motion failed. A copy of the bill and the summary is attached.

H.B. 996 – Repeal ACH/Public Housing Study.

Senator Jenkins was recognized to explain the bill. Senator Rand moved to adopt the PCS for discussion and the motion carried. The PCS repeals a requirement that the Department of Health and Human Services study the feasibility of operating a licensed adult care home in a public housing facility and directs the UNC Center on Poverty, Work and Opportunity to conduct the study. Senator Hoyle moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1485 – Insurance/Health Care Provider Relationship.

Representative Barnhart was recognized to explain the bill, which reforms the process for recovery of overpayments to providers by insurers. Senator Clary was recognized to offer a clarifying amendment. Kory Goldsmith, a staff attorney with the Research Division, was recognized to explain the amendment. Senator Clary moved for its adoption. The motion carried. Mark Trogden, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions and explain the fiscal note. Senator Rand moved for a favorable report, but the bill was removed from the agenda to allow the insurance companies to review the approved amendment. A copy of the bill, the amendments, the summary and the fiscal note is attached.

H.B. 1222 – Mortgage/Rate Spread & High-Cost Loans.

Senator Blue was recognized to explain the bill and moved to adopt the PCS for discussion. The PCS updates the rate spread and high-cost home loans statutes, and makes a conforming change to the Emergency Program to Reduce Home Foreclosures Act. Jim McGookey, General Counsel for First Citizens Bank, was recognized to answer questions. Senator Blue and Senator Jenkins moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 12:06 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 14, 2009

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

FAVORABLE

H.B.(CS #1) **1228** ABC Rules/Private Clubs.
Sequential Referral: None
Recommended Referral: None

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

H.B. **996** Repeal ACH/Public Housing Study.
Draft Number: 11016
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1289** No Lottery at Check Cashing Sites.
Draft Number: 11017
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
H996 – Sen. Jenkins
H1228 – Sen. Boseman
H1289 - ??

Principal Clerk ____
Reading Clerk ____

Corrected: S829 - Regulations of Appraisal Management Companies has been removed from the agenda.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 14, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 516	Community Association Managers Licensure.	Senator Hunt
HB 667	2009 Viticulture/Enology Act.	Representative Goodwin Representative Gibson, III
HB 996	Repeal ACH/Public Housing Study.	Representative Farmer-Butterfield Representative Tolson
HB 1222	Mortgage/ Rate Spread & High-Cost Loans.	Representative Blue
HB 1228	ABC Rules/Private Clubs.	Representative Gibson, III
HB 1289	No Lottery at Check Cashing Sites.	Representative Lucas Representative Harrison Representative Samuelson Representative Fisher
HB 1353	No Ordinances/Deeds May Stop Clotheslines.	Representative Harrison Representative Samuelson Representative Fisher
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 14, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 516	Community Association Managers Licensure.	Senator Hunt
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins
HB 667	2009 Viticulture/Enology Act.	Representative Goodwin Representative Gibson, III
HB 996	Repeal ACH/Public Housing Study.	Representative Farmer-Butterfield Representative Tolson
HB 1222	Mortgage/ Rate Spread & High-Cost Loans.	Representative Blue
HB 1228	ABC Rules/Private Clubs.	Representative Gibson, III
HB 1289	No Lottery at Check Cashing Sites.	Representative Lucas Representative Harrison Representative Samuelson Representative Fisher
HB 1353	No Ordinances/Deeds May Stop Clotheslines.	Representative Harrison Representative Samuelson Representative Fisher
HB 1485	Insurance/Health Care Provider Relationship.	Representative England, M.D. Representative Neumann, IV Representative Steen, II Representative Barnhart

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, July 14, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 667	2009 Viticulture/Enology Act.	Rep. Goodwin Rep. Gibson
HB 996	Repeal ACH/Public Housing Study.	Rep. Farmer-Butterfield Rep. Tolson
HB 1222	Mortgage/ Rate Spread & High-Cost Loans.	Sen. Blue
HB 1228	ABC Rules/Private Clubs.	Rep. Gibson
HB 1289	No Lottery at Check Cashing Sites.	Rep. Lucas Rep. Harrison Rep. Samuelson Rep. Fisher
HB 1353	No Ordinances/Deeds May Stop Clotheslines.	Rep. Harrison Rep. Samuelson Rep. Fisher
HB 1485	Insurance/Health Care Provider Relationship.	Rep. England Rep. Neumann Rep. Steen Rep. Barnhart
SB 516	Community Association Managers Licensure.	Sen. Hunt

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Galanis	NC Beer & Wine
John Walker	State Health Plan
Carol Durrell	"
Kathy Hawkins	RNO Progress Energy
Gregg Thayer	NFIB
Diana Staneluis	NC citizen
Scott Gardner	Duke Energy
Colleen Kochanek	KLG
Jack Cozart	WCSR
Frank Gray	NCMHA
[illegible]	Rep. Hollines

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	AT&T
Alyn Goodson	WCSR – Raleigh
Leigh Phillips	WCSR - Raleigh
[signature]	WCSR - Raleigh
Sonny S. Haynes	WCSR - Raleigh
Cameron L. Hinely	Electricities of NC
Daniel Baum	K&L Gates

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc of Realtors
Victoria Hawkins	Bond & Assoc
PB Powell	AOC
MB Burnett	Sec State
Paul Meugert	AMG, Inc.
Paul Stah	NCBA
Alicia	MWC
Barbara Cansler	B&C
Mari Lanier	GSK
K Wyatt	BCBS, NC
Kathryn Mullican	BCBSNC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	JD, AL, BA
	RANC -
John Szoka	North Carolina Assn. of Mort. Professionals
Gibbs Knotts	Western Carolina Univ.
Mark Fleming	BCBSNC
Lauren Whaley	NC Credit Union League
Jordan Qualls	NCALTCF
Lou Wilson	NCALTCF
Kristi Huff	NCHCFA
	Payne Spruill
Andrew Cagle	DLC + Assoc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DAVID DUNN	UNC CHARLOTTE 49 NINERS!
[signature]	NCIC GO PACK!
Allison Waller	Charlotte Chamber
Mark R Johnson	WCSR - Raleigh Go Bulldogs/ Winsto
Robert Taylor	WCSR - Raleigh
Nate Cooper	" "
Megan Boyle	WCSR - Raleigh
Emily Sallinger	NCBA
Kim Crouch	NCBA

Melanie Green	DCR
Rev. Mark Creech	CAL
Jami Fitzgerald	CAL
Brittany Fariell	NCFPC
Roz Savitt	NCICC

Doug Howey	NCPCM
Doug Lassiter	NCSTA
John Goodman	NC Chamber

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Church	NCALE
E Creekman	First Citizens Bank
TED Hamby	NC DOI
Nathan Batts	NCBA
Ashley H. Bell	American Cancer Society
Chris Kulcka	CMC
Rebecca Trent	NCACC
[illegible]	MWC
Deena DeCamillis	UNC-IOG
[illegible]	Fac
Dirk Carlton	Atty.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 14, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lindsey Wakely	NCREC
CHARLIE MOODY	NCREC
Becki Gray	John Locke Foundation
Alice Garland	NCEL
Tom Shaheen	NCEL
Pam Walker	NCEL
Penny Edwards	GRCVB
Jeff Horton	DHHS - DHSR
JESSE GOODMAN	DHHS/DAJR
S Wilson	DHHS
JAY RAJA	VNC Charlotte

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 667
Committee Substitute Favorable 5/6/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H667-CSSU-72 [v.1]

7/6/2009 4:17:59 PM

Short Title: 2009 Viticulture/Enology Act. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S ABC LAWS TO CREATE AN EXEMPTION FOR ACCREDITED COMMUNITY COLLEGES, COLLEGES, AND UNIVERSITIES FOR THE MANUFACTURE, POSSESSION, AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE PURPOSE OF CONDUCTING SCIENTIFIC, CHEMICAL, PHARMACEUTICAL, MECHANICAL, INDUSTRIAL, AND EDUCATIONAL RESEARCH, TO ALLOW THE HOLDER OF A VITICULTURE/ENOLOGY COURSE AUTHORIZATION TO SELL UNFORTIFIED WINE AT A NON-CAMPUS LOCATION, TO ALLOW WINE PRODUCERS AND WINERIES HOLDING AN OFF-PREMISES UNFORTIFIED WINERY PERMIT TO SELL UNFORTIFIED WINE AT THEIR PREMISES DURING BUSINESS HOURS AND TO ALLOW WINERIES TO SELL THEIR WINE AT AN ADDITIONAL LOCATION IN THE COUNTY UNDER SPECIFIED CONDITIONS, AND TO AMEND THE DEFINITION OF SPORTS CLUB TO INCLUDE CERTAIN EQUESTRIAN CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-103 is amended by adding a new subdivision to read:

"(5a) The manufacture, possession, and consumption of alcoholic beverages for the purpose of conducting scientific, chemical, pharmaceutical, mechanical, industrial, and educational research in connection with teaching, research, or extension programs conducted by, or under the supervision of, an instructor at an accredited community college, public or private college or university, or an extension agent in connection with educational programs and activities offered by the North Carolina Cooperative Extension Service."

SECTION 2. G.S. 18B-1114.4 (a) reads as rewritten:

"(a) Authorization. – The holder of a viticulture/enology course authorization may:

(1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.

(2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.

(3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(4) Sell wines produced during the course, upon obtaining a permit under G.S. 18-B-1001(4)."

SECTION 3. G.S. 18B-1001(4) reads as rewritten:

"(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subsection is authorized to sell wines manufactured during its viticulture/enology program at one non-campus location in a county where the permittee holds and offers classes on a regular full time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified ~~wine.~~ wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision."

SECTION 4. G.S. 18B-1000(8) reads as rewritten:

"(8) Sports club. – An establishment that meets either of the following requirements:

a. The establishment is substantially engaged in the business of providing equine boarding, training, and coaching services, and the establishment offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned or endorsed by the United States Equestrian Federation, Inc.; or

b. The establishment is substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both.

The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee."

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

HOUSE BILL 667:
2009 Viticulture/Enology Act

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 7, 2009
Introduced by:	Reps. Goodwin, Gibson	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Second Edition H667-CSSU-72		

SUMMARY: ***The Proposed Committee Substitute for House Bill 667 amends the law concerning the issuance of an off-premises unfortified wine permit as follows:***

- ***Creates an exemption from the ABC laws for colleges and universities conducting various types of research.***
- ***Allows a school that is a holder of a viticulture/enology course authorization to be issued an off-premises unfortified wine permit to sell wines produced as part of its program.***
- ***Allows a winery or wine producer to sell its own unfortified wine during hours when the winery is open to the public, subject to any local ordinance that might apply. The permit would also allow a winery to sell its wine at one additional location in the county under the same conditions specified for the sale of wine at the winery.***
- ***Amends the definition of sports club to include certain equestrian centers.***

CURRENT LAW: G.S. 18B-102 provides that it is unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law. A number of specific exemptions apply, and include various uses of ethyl alcohol, and various uses of alcoholic beverages for scientific, medical, pharmaceutical, and educational purposes.

G.S. 18B-1101 authorizes the issuance of an unfortified winery permit. A holder of the permit may manufacture unfortified wine[1] and sell the wine at the winery for on- or off-premise consumption upon obtaining the appropriate permit, regardless of the results of any local wine election. The winery may also sell wine manufactured by the winery or produced under the winery's label for on- or off-premise consumption at no more than three other locations in the State upon obtaining the appropriate permit.

G.S. 18B-1001 provides for the issuance of various retail permits. An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises, and authorizes the holder to ship unfortified wine in closed containers to individual purchasers inside and outside the state. The permit may be issued for retail businesses, and may be issued for a winery for sale of its own unfortified wine.

G.S. 18B-1114.3 authorizes the holder of a wine producer[2] permit to sell the wine manufactured from its crops for on or off premise consumption upon obtaining the appropriate permit, regardless of the results of any local wine election.

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[1] "Unfortified wine" means any wine of 16% or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

[2] A "wine producer" means a farming establishment of at least five acres committed to the production of grapes, berries, or other fruits for the manufacture of unfortified wine.

BILL ANALYSIS: Section 1 of the PCS would create an exemption from the ABC laws for accredited community colleges, colleges and universities for the manufacture, possession and consumption of alcoholic beverages for the purpose of conducting various types of research in connection with programs conducted by or under the supervision of a college instructor or an agent of the NC Cooperative Extension Service.

Sections 2 and 3 of the PCS would allow a school that holds a viticulture/enology authorization to sell wines manufactured as part of its program. The wines could be sold at one non-campus location in a county where the permittee offers classes on a regular basis in a facility owned by the permittee.

Section 3 of the PCS would amend the law concerning the issuance of an off-premises unfortified wine permit. The permit, when issued to a winery or wine producer, would allow the winery or wine producer to sell its own unfortified wine during hours when the winery or wine producer is open to the public, subject to any local ordinance that might apply. (Generally, unfortified wine and other alcoholic beverages cannot be sold between the hours of 2:00 a.m. and 12:00 noon on Sunday. A city or county may adopt an ordinance prohibiting the sale of malt beverages and wine from 12:00 noon on Sunday until 7:00 a.m on the following Monday.) The permit would also allow a winery to sell its wine at one additional location in the county under the same conditions specified for the sale of wine at the winery.

Section 4 of the PCS would amend the definition of 'sports club' in Chapter 18B to include an establishment that provides equine boarding, training, and coaching, and that also offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned by the United States Equestrian Federation, Inc.

EFFECTIVE DATE: The act would be effective when it becomes law.

Brenda Carter, counsel to House Alcoholic Beverage Control, substantially contributed to this summary.

H667-SMSU-133(CSSU-72) v2

HOUSE BILL 1228
Committee Substitute Favorable 5/13/09
Third Edition Engrossed 5/14/09

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. 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.

HOUSE BILL 1228:
ABC Rules/Private Clubs

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 6, 2009
Introduced by:	Rep. Gibson	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1228 amends G.S. 18B-1008 which sets forth 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: **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.

Brenda Carter, counsel to the House Alcohol Beverage Control Committee, substantially contributed to this summary.

H1228-SMRO-143(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1289
Committee Substitute Favorable 5/5/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1289-CSRC-52 [v.2]

7/13/2009 11:24:18 PM

Short Title: Lottery-No Check Cashing Sites/High Sch Ads. (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 AND TO PROHIBIT ANY STATE LOTTERY ADVERTISING OR SPONSORSHIP RELATED TO HIGH SCHOOL SPORTS OR HIGH SCHOOL SPORTING EVENTS..

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. G.S. 18C-114(a)(2) reads as rewritten:

"**§ 18C-114. Powers and duties of the Commission.**

(a) The Commission shall have the following powers and duties:

...

(2) To prescribe the nature of lottery advertising or sponsorship which shall comply with the following:

a. All advertising shall include resources for responsible gaming information.

b. No advertising may intentionally target specific groups or economic classes.

c. No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties.

d. No advertising may have the primary purpose of inducing persons to participate in the Lottery.

e. No advertising or sponsorship may take place in connection with any high school sport or high school sporting event, or be placed in any high school sporting venue.

..."

SECTION 3. This act is effective when it becomes law. Section 2 applies to contracts and sponsorships entered into, renewed or extended on or after that date.

HOUSE BILL 1289:
Lottery-No Check Cashing Sites/High Sch Ads.

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 13, 2009
Introduced by:	Reps. Harrison, Fisher, Lucas, Samuelson	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition H1289-CSRC-52		

SUMMARY: HB 1289 amends the law governing the North Carolina State Lottery to prohibit the Lottery Commission from contracting with check-cashing businesses to act as lottery retailers. The PCS adds a provision that would also prohibit the Commission from placing an advertisement or sponsorship with any high school sport or sporting event, or in any high school sporting venue.

CURRENT LAW: G.S 18C-141 directs the Lottery Director to recommend to the Lottery Commission those persons with whom the Commission may contract with to sell tickets for lottery games. 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.

G.S. 18C-114(a)(2) specifies the Commission's powers and duties related to advertising, which must comply with all of the following:

- All advertising must have resources for responsible gaming information.
- No advertising can intentionally target specific groups or economic classes.
- No advertising can be misleading, deceptive, or present any lottery game as a means of relieving financial or personal difficulties.
- No advertising can have the primary purpose of inducing persons to participate in the State Lottery.

BILL ANALYSIS:

Section 1 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. This exclusion applies to those who are required to be licensed as check-cashing businesses by the Commissioner of Banks.

Section 2 would prohibit lottery advertising or sponsorship from taking place in connection with any high school sport or high school sporting event. It would also prohibit advertising or sponsorship from being placed in any high school sporting venue.

EFFECTIVE DATE: The act is effective when it becomes law. Section 2 applies to contracts and sponsorships entered into, renewed or extended on or after that date

Karen Cochrane Brown, Counsel to House Commerce, Small Business, and Entrepreneurship, and Drupti Chauhan, Counsel

H 3

HOUSE BILL 1353
Committee Substitute Favorable 5/11/09
Committee Substitute #2 Favorable 5/12/09

Short Title: No Ordinances/Deeds May Stop Clotheslines. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CITY ORDINANCES AND COUNTY ORDINANCES CANNOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING THE INSTALLATION OF CLOTHESLINES NOT VISIBLE BY A PERSON ON THE GROUND AND NOT FACING AREAS OPEN TO COMMON OR PUBLIC ACCESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-202. Limitations on regulating clotheslines.**

(a) No city ordinance shall prohibit, or have the effect of prohibiting, the installation of a clothesline, and no person shall be denied permission by a city to install a clothesline for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of clotheslines, provided the ordinance does not have the effect of preventing the reasonable use of a clothesline for a residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of clotheslines that are visible by a person on the ground and that face areas open to common or public access."

SECTION 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-144.1. Limitations on regulating clotheslines.**

(a) No county ordinance shall prohibit, or have the effect of prohibiting, the installation of a clothesline for a residential property. No person shall be denied permission by a county to install a clothesline for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of clotheslines, provided the ordinance does not have the effect of preventing the reasonable use of a clothesline for a residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of clotheslines that are visible by a person on the ground and that face areas open to common or public access."

SECTION 3. This act becomes effective October 1, 2009.

HOUSE BILL 1353:
No Ordinances/Deeds May Stop Clotheslines

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 13, 2009
Introduced by:	Reps. Harrison, Samuelson, Fisher	**Prepared by:**	Steven Rose Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1353 would prohibit city and county ordinances from prohibiting clotheslines. Certain screening and placement restrictions are permitted.***

CURRENT LAW: City and county ordinances, as well as restrictive covenants, may not prohibit solar collectors that gather solar energy as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or the generation of electricity for single family detached residences, except on the façade side of the residence facing common or public access areas. Ordinances and restrictive covenants that regulate location and screening of solar collectors are permitted, provided they do not prevent the reasonable use of a solar collector. In civil actions brought under the provisions of these statutes, the court may award costs and attorneys' fees to the prevailing party.

There are no statutes regarding the regulation of clotheslines.

BILL ANALYSIS: House Bill 1353 would prohibit city and county ordinances from prohibiting the installation of clotheslines.

City and county ordinances may place the following restrictions on the placement of clotheslines:

- Regulating the placement or screening of clotheslines provided the ordinance does not have the effect of preventing the reasonable use of clothesline for residential property.
- Prohibiting the placement of clotheslines that are visible from the ground, and face areas open to common or public access.

EFFECTIVE DATE: This act becomes effective on October 1, 2009.

Heather Fennell, counsel to the House Energy and Energy Efficiency Committee, and Jennifer Mundt, legislative analyst for House Water Resources and Infrastructure, substantially contributed to this summary.

H1353-SMRL-111(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 996
PROPOSED SENATE COMMITTEE SUBSTITUTE H996-CSSH-58 [v.2]

6/30/2009 4:03:45 PM

Short Title: Replace DHHS with UNC Poverty for Study. (Public)

Sponsors:

Referred to:

April 2, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL A REQUIREMENT THAT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES STUDY THE FEASIBILITY OF OPERATING A LICENSED ADULT CARE HOME IN A PUBLIC HOUSING FACILITY AND TO DIRECT THE UNC CENTER ON POVERTY, WORK AND OPPORTUNITY TO CONDUCT THE STUDY.

The General Assembly of North Carolina enacts:

SECTION 1. Part XIII of S.L. 2008-181 is repealed.

SECTION 2.(a). The University of North Carolina Center on Poverty, Work and Opportunity shall study the feasibility and possible savings to the State of operating a licensed adult care home in a public housing facility. The study shall determine:

(1) Whether this model is needed to complement the care options currently available to older adults in North Carolina.

(2) Whether this model is allowable under current State and federal laws and rules, and if not, what changes are needed.

(3) How State-County Special Assistance and federal public housing subsidies would work together and whether this could result in a reduced State-County Special Assistance rate for these types of entities and possible savings for the State.

SECTION 2.(b). The University of North Carolina Center on Poverty, Work and Opportunity shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and to the Study Commission on Aging, on or before August 1, 2010.

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

HOUSE BILL 996:
Replace DHHS with UNC Poverty for Study

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 7, 2009
Introduced by:	Reps. Farmer-Butterfield, Tolson	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition H996-CSSH-58		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 996 repeals Part XIII, S.L. 2008-181, which required the Department of Health and Human Services to study the feasibility of operating a licensed adult care home in a public housing facility and directs the University of North Carolina Center on Poverty, Work and Opportunity to complete the study.

CURRENT LAW: S.L. 2008-181 is also known as The Studies Act of 2008.

Part XIII of S.L. 2008-181 is provided below:

> **PART XIII. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE FEASIBILITY OF OPERATING A LICENSED ADULT CARE HOME IN A PUBLIC HOUSING FACILITY (S.B. 2011 – Swindell; H.B. 2704 – Farmer-Butterfield, Tolson, Bordsen, Boylan)**
>
> **SECTION 13.1.** The Department of Health and Human Services, Division of Aging and Adult Services and Division of Medical Assistance, shall study the feasibility and possible savings to the State of operating a licensed adult care home in a public housing facility. The study shall determine:
>
> (1) Whether this model is needed to complement the care options currently available to older adults in North Carolina.
> (2) Whether this model is allowable under current State and federal laws and rules, and if not, what changes are needed.
> (3) How State-County Special Assistance and federal public housing subsidies would work together and whether this could result in a reduced State-County Special Assistance rate for these types of entities and possible savings for the State.
>
> **SECTION 13.2.** The Department shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and to the Study Commission on Aging, on or before August 1, 2009.

BILL ANALYSIS: The PCS for House Bill 996 repeals Part XIII of S.L. 2008-181, which would have required the Department of Health and Human Services to study the feasibility of operating a licensed adult care home in a public housing facility and report its results by August 1, 2009. The PCS instead requires the University of North Carolina Center on Poverty, Work and Opportunity to do the study and gives them an additional year to report the results.

EFFECTIVE DATE: House Bill 996 would be effective when it becomes law.

Theresa Matula substantially contributed to this summary.

H996-SMSU-130(CSSH-58) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1222
Committee Substitute Favorable 5/5/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1222-CSRO-73 [v.1]

7/13/2009 7:00:22 PM

Short Title: Mortgage/Rate Spread & High-Cost Loans. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE RATE SPREAD AND HIGH-COST HOME LOANS STATUTES, AND TO MAKE A CONFORMING CHANGE TO THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1E(a)(5) reads as rewritten:

"**§ 24-1.1E Restrictions and limitations on high-cost home loans.**

(a) Definitions. – The following definitions apply for the purposes of this section:

...

(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential.

2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".

3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.

4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

b. Notwithstanding the remaining provisions of this subdivision, the term does not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

c. For open-end credit plans, the term includes those points and fees described in sub-subdivisions a.1. through a.3. of this ~~subdivision that are charged at or before loan closing,~~ subdivision, plus (i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount, and (ii) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents."

SECTION 2. G.S. 24-1.1F reads as rewritten:

"**§ 24-1.1F Rate spread home loans.**

(a) Definitions. – The following definitions apply for purposes of this section:

(1) Annual percentage rate. – The annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.) and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and regulations are amended from time to time.

~~(2) Closed-end loan. – A loan other than an open-end credit plan as defined in this section.~~

(2) Average prime offer rate. – An annual percentage rate published by the Federal Reserve Board and that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.

~~(3) Home loan. – A loan that has all of the following characteristics:~~

~~a. The loan is not an equity line of credit as defined in G.S. 24-9(a)(2), a construction loan as defined in G.S. 24-10(c), or a reverse mortgage transaction.~~

~~b. The borrower is a natural person.~~

~~c. The debt is incurred by the borrower primarily for personal, family, or household purposes.~~

~~d. The principal amount of the loan does not exceed the conforming loan size limit for a single family dwelling as established from time to time for Fannie Mae.~~

~~e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-147(7), in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a~~

~~mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.~~

~~f.~~ ~~A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.~~

(4) **(Effective until January 1, 2009)** Mortgage broker. – A mortgage broker as defined in G.S. 53-243.01(14).

(4) **(Effective January 1, 2009)** Mortgage broker. – A mortgage broker as defined in G.S. 53-243.01.

~~(5) Obligor. – Each borrower, co-borrower, cosigner, or guarantor obligated to repay a rate spread home loan.~~

~~(6) Open-end credit plan. – Credit extended by a lender under a plan in which (i) the lender reasonably contemplates repeated transactions, (ii) the lender may charge interest or otherwise impose a finance charge from time to time on an outstanding unpaid balance, and (iii) the amount of credit that may be extended to the obligor during the term of the plan, up to any credit limit set by the lender, is generally made available to the extent that any outstanding balance is repaid.~~

(7) Rate spread home loan. – A ~~home~~ loan in which all the following apply:

~~a.~~ ~~The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) 3 percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 5 percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.)(HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b.~~ ~~The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) 1.75 percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 3.75 percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments~~

~~for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. The loan's annual percentage rate exceeds each of the following:

1. The average prime offer rate for a comparable transaction as of the date the interest rate for the loan is set by (i) one and one-half percentage points (1.5%) or more, if the loan is secured by a first lien mortgage or deed of trust or (ii) three and one-half percentage points (3.5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust.

2. The conventional mortgage rate by (i) one and three-quarters percentage points (1.75%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-quarters percentage points (3.75%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve system in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.

3. The yield on U.S. Treasury securities having comparable periods of maturity by (i) three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%) o more, if the loan is secured by a subordinate lien mortgage or deed of trust.

Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. §2801, et seq. (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.

(b) No prepayment fees or penalties shall be charged or collected on a rate spread home loan.

~~(c) No lender shall make a rate spread home loan unless the lender reasonably and in good faith believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender making a rate spread home loan knows that one or more mortgage loans secured by the same real property will be made contemporaneously to the same borrower with the rate spread home loan being made by that lender, the lender making the rate spread home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.~~

~~(1) A lender's analysis of an obligor's ability to repay a rate spread home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the obligor's credit history, current and expected income, current obligations, employment status, and other financial resources other than the obligor's equity in the real property that secures repayment of the rate spread home loan.~~

~~(2) In determining an obligor's ability to repay a rate spread home loan, the lender shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the obligor using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third party verification.~~

~~(3) In determining an obligor's ability to repay a rate spread home loan according to its terms when the loan has an adjustable rate feature, the lender shall take into consideration any balance increase that may accrue from any negative amortization provision. The lender shall calculate the monthly payment amount for principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed interest rate at the time of the loan closing, without considering any initial discounted rate. The "fully indexed interest rate at the time of the loan closing" is the interest rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula, (for example, an interest rate index plus or minus a margin) that applies under the terms of the loan documents to subsequent interest rate adjustments, disregarding any limitations on the amount by which the interest rate may change at any one time.~~

~~(4) A lender's analysis of an obligor's ability to repay a rate spread loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.~~

(c) No lender shall make a rate spread home loan to a borrower based on the value of the borrower's collateral without due regard to the borrower's repayment ability as of consummation, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations. Without regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of Title 12 of the Code of Federal Regulations, the methodology and standards for the determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of the Code of Federal Regulations and the related Federal Reserve Board's Official Staff Commentary on Regulation Z, as the regulation and commentary may be amended from time to time, shall be applied to determine a lender's compliance with this requirement.

(d) The making of a rate spread home loan which violates subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter. In addition, any prepayment penalty in violation of this section shall be unenforceable. However, ~~an obligor~~ a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.

(e) The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (ii) any other such subterfuge.

(f) A lender in a rate spread home loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 90 days of the loan closing and prior to the institution of any action against the lender under this section, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c), or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action against the lender under this section or the lender's receipt of written notice of the compliance failure, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period

of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(g) The provisions of this section 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 3. G.S. 45-101 reads as rewritten:

"**§ 45-101. (For expiration date, see note) Definitions.**

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

(1a) Annual percentage rate. – Defined in G.S. 24-1.1F.

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term 'servicer' in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

(3a) Rate spread home loan. – A home loan in which all the following apply:

a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.

b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three-fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.

(4) Subprime loan. – A loan, originated on or after January 1, 2005, but before December 31, 2007, that ~~would meet~~ meets the definition of a rate spread home loan under ~~G.S. 24-1.1F(a)(7), if that section had been in effect when the loan was originated.~~ this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act."

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

HOUSE BILL 1222:
Mortgage/Rate Spread & High-Cost Loans

2009-2010 General Assembly

Committee:.	Senate Commerce	**Date:**	July 13, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to Second Edition H1222-CSRO-73		Committee Counsel

SUMMARY: House Bill 1222 amends the rate spread and high-cost home loan statutes to update the definition of rate spread home loan and to clarify the definition of points and fees in connection with high-cost home loans. The bill also adds a provision which clarifies several definitions in the Emergency Program to Reduce Home Foreclosure Act.

The PCS amends the definition of rate spread loans to allow lenders to use either the federal rules or the existing definition under North Carolina law to determine if a loan is a rate spread loan.

CURRENT LAW:

North Carolina's current anti-predatory lending law, enacted in 1999, places restrictions on "high-cost home loans" in order to create a disincentive to make such loans. A high-cost home loan is a loan that meets one or more of three thresholds. The thresholds relate to interest rate, the total amount charged as points and fees, and prepayment penalties. In order to avoid being a high-cost home loan, the total amount charged as points and fees cannot exceed 5% of the total loan amount. In 2007, the law was amended to include compensation paid to a mortgage broker from any source in the definition of points and fees.

Also in 2007, a new section applicable only to "rate spread home loans" was created. Rate spread home loans are residential mortgage loans 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, or at least 5% greater than a Treasury note or 3.75% greater than a conventional mortgage on a subordinate loan.

In 2008, the General Assembly created an "Emergency Program to Reduce Home Foreclosures". The program authorized the Commissioner of Banks to use information gained from mortgage servicers about certain subprime loans to attempt to assist the parties avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days in an appropriate case. The Program expires on October 31, 2010.

BILL ANALYSIS:

Section 1 amends the definition of the term "points and fees" in the anti-predatory lending law. It clarifies that certain items or charges required to be disclosed under Regulation Z are included in the calculation of the threshold only when the items or charges are paid by the borrower at or before closing.

Section 2 amends the rate-spread home loan definition and the determination of the borrower's ability to repay to allow lenders to meet either the new Federal Reserve rules defining rate spread loans or the current definition in North Carolina law. The State is not required to conform to federal rules, but including this definition will make it easier for some lenders to comply with the law, while not compromising consumer protections.

Section 3 amends the Emergency Program to Reduce Home Foreclosures Act with regard to the definition of the term "subprime loan". Under current law, the definition contains a cross reference to the definition of the term "rate spread home loan" under G.S. 24-1.1F(a)(7), which is the section being amended by Section 2 of this bill. This section preserves the old definition for purposes of determining which loans are subject to the foreclosure reduction program.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

H1222-SMRO-147(CSRO-73) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: Proposed Amendment to House Bill 1485 (H1485-ARC-21 [v.2])

SHORT TITLE: Insurance/Health Care Provider Relationship.

SPONSOR(S): Representatives Barnhart, England, Steen, and Neumann

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SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: The proposed amendment modifies House Bill 1485 (Third Edition) to do the following:

1) Changes the bill title to "AN ACT TO CLARIFY THE SPECIFIC INFORMATION AN INSURER MUST PROVIDE WHEN RECOVERING OVERPAYMENTS FROM A HEALTH CARE PROVIDER OR A HEALTH CARE FACILITIY";

2) Requires a health insurer to include in a written notice to a medical provider, for the purposes of seeking a recovery for a thought to be previously overpaid paid medical claim, the following information:
   i) a patient's name and identification number;
   ii) the service date of the claim;
   iii) the payment amount received by the health care provider or facility; and
   iv) an explanation of the proposed revised payment amount.

   The written notice requirements stated above would not apply in the case of fraud or other intentional misconduct by a health care provider or facility.

3) The proposed amendment also deletes from the third edition of the bill extended timeframes limiting how quickly an insurer can seek to recovery a potential overpayment.

EFFECTIVE DATE: Section 1 of the bill would become effective October 1, 2009. The remainder of the bill would become effective when it becomes law.

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for the Teachers and State Employees, estimates that implementation of the proposed amendment will not have an impact on the Plan.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, estimates that implementation of the proposed amendment will not have an impact on the Plan.

ASSUMPTIONS AND METHODOLOGY: The actuarial analyses used by each respective consulting actuary are on file with the Fiscal Research Division. Copies of each respective consulting actuary's analysis, including assumptions, are also attached to the original copy of this Legislative Actuarial note.

Given that the bill affects a potential legal and administrative relationship between the Claims Processing Contractor (CPC) and medical providers under contract with the CPC, no independent actuarial analysis of data was possible. All assumptions and cost estimates reported by each consulting actuary were provided by the Plan and were not independently evaluated.

Based on information provided by the Plan's Claims Processing Contractor, Blue Cross Blue Shield of North Carolina, the Plan's claims overpayment recovery experience for calendar year 2008 indicates that 14% of total recoveries, or $2.2 million, occur beyond 365 days of the original date of claims payment. For the Plan's claims in the 2008 calendar year subject to an overpayment recovery, approximately $16 million in total overpayment recoveries were collected within the two year period currently allowed under G.S. 58-3-225. Of this total amount an estimated $12 million, or 75% of total recoveries, are cash recoveries and the other 25% is from offsetting future reimbursements to affected providers or facilities (approximately $1.7 million).

The current statutory requirement allowing an insurer a period of up to two years from the date of an original claim to recover a potential overpayment remains unchanged.

Summary Information and Data about the Plan

The Plan administers health benefit coverage for active employees from employing units of State agencies and departments, universities, local public schools, and local community colleges. Eligible retired employees of authorized employing units may also access health benefit coverage under the Plan. Eligible dependents of active and retired employees are authorized to participate in the Plan provided they meet certain requirements. Employees and retired employees of selected local governments may also participate in the Plan under certain conditions. Members of fire, rescue squads, and the National Guard may also obtain coverage under the Plan provided they meet certain eligibility criteria.

As of July 1, 2008, the State finances the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts are derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage are paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.6 billion for FY 2008-09. The Plan's PPO benefit design includes three alternative benefit levels offered to plan members. The three alternative benefit levels include the following:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums;

2) The "Standard" 80/20 plan; and

3) The "Plus" 90/10 plan with enhanced benefits via lower out-of pocket requirements as compared to the other PPO plan alternatives offered.

As of July 1, 2009, the State will continue to finance the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts will be derived

through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage will be paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.5 billion for FY 2009-10 and $2.7 billion for FY 2010-11. The Plan's PPO benefit design will include two alternative benefit levels listed below:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums; and

2) The "Standard" 80/20 plan.

The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under both plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised Summer 2008) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year were projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan were expected to be $2.4 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss was projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses were expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year.

Financial Projection (Revised April 2009) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $49.0 million from Medicare Part D subsidies, $3.3 million from investment earnings, and $250.0 million from a direct General Fund appropriation from the Rainy Day Fund (Savings Reserve Account) for a total of approximately $2.6 billion in receipt income for the year. The $250 million from a direct General Fund appropriation was provided by Session Law 2009-16 (Senate Bill 287) to finance a shortfall in funds available to pay health care benefits, administrative costs, and adequately fund the Plan's beginning cash balance on July 1, 2009. Projected disbursements from the Plan are expected to be $2.4 billion in claim-payment expenses and $180.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $7.1 million for the fiscal year, assuming a 9% annual claims growth trend.

Financial Projection 2009-11 Biennium (April 2009) – Session Law 2009-16 (Senate Bill 287) appropriates funds from various sources, authorizes annual premium rate increases, makes various benefit and provider related changes to achieve financial savings, and directs other various changes to the Plan. The enacted law also appropriates the sum of $250 million from the Savings Reserve Account ("Rainy Day Fund") of the General Fund for the 2008-09 fiscal year. The following summarized financial projections by

fiscal year for the 2009-11 biennium assume the changes enacted in Session Law 2009-16 (Senate Bill 287).

For the fiscal year beginning July 1, 2009, the Plan is projected to begin its operations with a beginning cash balance of $146.9 million. Receipts for the year are projected to be $2.4 billion from premium collections, $56.3 million from Medicare Part D subsidies, and $8.0 million from investment earnings for a total of approximately $2.5 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.3 billion in claim-payment expenses and $185.6 million in administration and claims-processing expenses for projected total expenses of nearly $2.5 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $14.8 million for the fiscal year, assuming a 9% annual claims growth trend and an annual premium increase of 8.9% effective July 1, 2009.

For the fiscal year beginning July 1, 2010, the Plan is projected to begin its operations with a beginning cash balance of $146.9 million. Receipts for the year are projected to be $2.7 billion from premium collections, $50.4 million from Medicare Part D subsidies, and $8.8 million from investment earnings for a total of approximately $2.7 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.5 billion in claim-payment expenses and $191.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.7 billion for FY 2010-11. The Plan's net operating income is projected to be approximately $30.6 million for the fiscal year, assuming a 9% annual claims growth trend and an annual premium increase of 8.9% effective July 1, 2010.

Other Information

Historically, the Plan has applied a premium increase in October of the first fiscal year of a biennium. However, the annual premium increases authorized in Session Law 2009-16 (Senate Bill 287) changes that methodology to an annual increase at the beginning of each fiscal year of the 2009-11 biennium.

Additional assumptions include Medicare benefit "carve-outs," cost containment strategies including prior approval for certain medical services, utilization of the "Blue Options" provider network, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection, and other authorized actions by the Executive Administrator and Board of Trustees to manage the Plan to maintain and improve the Plan's operation and financial condition where possible. Claim cost trends are expected to increase at a rate of 9% annually according to the Plan's consulting actuary. Investment earnings are based upon a 4.5% return on available cash balances.

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	**35,254**	**533,204**	**98,351**	**666,809**	**100%**
Percent of Total	**5.3%**	**80.0%**	**14.7%**	**100.0%**	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	**13,481**	**401,253**	**66,319**	**481,053**

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Enrollment Data Continued

III. Enrollment by Sex	Basic	Standard	Plus	Total
Female	18,837	334,917	61,752	415,506
Male	16,417	198,287	36,599	251,303
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Sex	Basic	Standard	Plus	Total
Female	53.4%	62.8%	62.8%	62.3%
Male	46.6%	37.2%	37.2%	37.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

IV. Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	17,390	136,277	27,211	180,878
30 to 44	8,125	107,375	17,315	132,815
45 to 54	5,164	94,548	18,277	117,989
55 to 64	3,195	102,901	23,452	129,548
65 & Over	1,380	92,103	12,096	105,579
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	49.3%	25.6%	27.7%	27.1%
30 to 44	23.0%	20.1%	17.6%	19.9%
45 to 54	14.6%	17.7%	18.6%	17.7%
55 to 64	9.1%	19.3%	23.8%	19.4%
65 & Over	3.9%	17.3%	12.3%	15.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

V. Retiree Enrollment by Category	Employee	Dependents	Total
Non-Medicare Eligible	49,534	12,080	61,614
Medicare Eligible	97,240	7,448	104,688
Total	**146,774**	**19,528**	**166,302**

Percent by Category (Retiree)	Employee	Dependents	Total
Non-Medicare Eligible	33.7%	61.9%	37.0%
Medicare Eligible	66.3%	38.1%	63.0%
Total	**100.0%**	**100.0%**	**100.0%**

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 1485 Amendment (H1485-ARC-21 [v.2], An Act to Clarify the Specific Information an Insurer Must Provide When Recovering Overpayments From a Health care Provider or Health care Facility", July 11, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "House Bill 1485, Proposed Amendment, H1485-ARC-21 [v.2], Clarify Information Required For Recovery of Overpayments From a Provider", July 13, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Marilyn Chism, Director

Fiscal Research Division

DATE: July 13, 2009

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

HOUSE BILL 1485
PROPOSED AMENDMENT
H1485-ARC-21 [V.2]

CLARIFY INFORMATION REQUIRED FOR RECOVERY OF OVERPAYMENTS FROM A PROVIDER

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

May 2009

ACTUARIAL STATEMENT

The North Carolina State Health Plan for Teachers and State Employees has requested that Aon Consulting prepare an Actuarial Note in response to House Bill 1485 Proposed Amendment H1485-ARC-21 [v.2] entitled "An Act To Clarify The Specific Information An Insurer Must Provide When Recovering Overpayments From A Health Care Provider Or A Health Care Facility."

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.

July 13, 2009

Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

Date

July 13, 2009

Kirsten R. Schatten, A.S.A., M.A.A.A.
Assistant Vice President

Date

CLARIFY INFORMATION REQUIRED FOR RECOVERY OF OVERPAYMENTS FROM A PROVIDER

PLAN CHANGES

The proposed legislation defines administrative processes and disclosure requirements for the recovery of overpayments made to health care providers or health care facilities. The full text of the bill is attached to this actuarial note.

PROJECTED COSTS

	Based on "Midpoint" Increase (in millions)		
Plan Design Change	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Clarify information required for recovery of overpayments to providers	No financial impact.		

* Based on total projected expenses of $2,486,310,245 and $2,681,918,655 for the 2010 and 2011 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- No claims cost/savings is projected for recovery of overpayments as the requirements in this bill only change administrative processes and disclosures.
- Administrative costs for implementation of the new requirements are not expected to be significant.

HARTMAN & ASSOCIATES, LLC

ACTUARIAL CONSULTING

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668 Link Road
Lexington, NC 27295

July 11, 2009

Mr. Mark Trogdon
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 1485 (3rd edition) Amendment (H1485-ARC-21 [v.2]): An Act to Clarify the Specific Information an Insurer Must Provide When Recovering Overpayments From a Health Care Provider or Health Care Facility

Dear Mr. Trogdon:

This third edition of the bill amends G.S. 58-3-225 to modify the prompt claim payment requirements for health benefit plans. These changes include modifications of the timeframe for recovery of overpayments by plans to health care providers and facilities. Under G.S. 135-44.4(28), these provisions apply to the North Carolina State Health Plan for Teachers and State Employees (the "Plan").

This amendment removes the changes to the overpayment timeframes currently in the bill. The amendment includes the change which requires that when seeking overpayment recovery, the insurer must provide the name and identification number of the patient, the service date, the payment amount, and an explanation of the revised payment including at least the change in code used and the reason for the change.

These changes are effective October 1, 2009 and apply to written notices for recoveries issued by insurers on or after that date.

Information provided by the Plan and its claims processor indicates that the amended bill will have no financial impact on the Plan.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, FCA, EA
Consulting Actuary

MVH/mt

include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

and on page 2, lines 33-36, by deleting the lines and substituting the following:

"**SECTION 3.** Section 1 becomes effective October 1, 2009 and applies to written notices issued by insurers on or after that date for the recovery of overpayments from health care providers or health care facilities. The remainder of the act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1485

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

H1485-ARC-21 [v.2]

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

Date 1-14-09 ~~,2009~~

Senator Clary

moves to amend the bill on page 1, lines 2-3, by deleting the lines and substituting the following:
"AN ACT TO CLARIFY THE SPECIFIC INFORMATION AN INSURER MUST PROVIDE WHEN RECOVERING OVERPAYMENTS FROM A HEALTH CARE PROVIDER OR A HEALTH CARE FACILITY.";

and on page 1, lines 5-36, by deleting the lines and substituting the following:

SECTION 1. G.S. 58-3-225(h) reads as rewritten:

"(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility for specific claims by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than 30 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care ~~facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery.~~ facility. The written notice required under this subsection shall include all of the following information: (i) the patient's name and identification number, (ii) the service date, (iii) the payment amount received by the health care provider or facility for the claim, and (iv) an explanation of the proposed revised payment amount which includes at a minimum the change in the code used, the amount of the revised payment, and the reason for the change in code. The requirements in the preceding sentence do not apply if the insurer provides documented evidence of fraud or other intentional misconduct by the health care provider or health care facility or its agents. The recovery of overpayments or offsetting of future payments may be made not more than two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor.";

and on page 2, lines 1-27, by deleting the lines and substituting the following:

"The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may

include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

and on page 2, lines 33-36, by deleting the lines and substituting the following:

"**SECTION 3.** Section 1 becomes effective October 1, 2009 and applies to written notices issued by insurers on or after that date for the recovery of overpayments from health care providers or health care facilities. The remainder of the act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE COMMERCE COMMITTEE
Thursday, July 16, 2009 at 9:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on July 16, 2009, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles presided. Tyson Blount of White Lake, Brooke Tetrauet of Charlotte, Mark Eatmon of Rocky Mount, Jenna Koester of Burlington, Matthew Lovejoy of Greensboro, Spence Newcombe, Trevor Burgess, Parker Robinson, Will Rhinehart, Garrett Bullok, Natalie Jones, and Allie Murphey of Gastonia served as pages.

H.B. 1084 – Revise LPG Dealer Requirements.

Representative was recognized to explain the bill. It makes various changes in the laws governing insurance producers and brokers, bail bondmen, motor clubs, premium finance companies, and collection agencies, and deletes obsolete references to assignments of error. Senator Rand offered a technical amendment which changed the effective date and moved for its adoption. The motion carried. Senator Rand offered a second amendment which allows an appellant to appeal for any grounds of relief that were not set forth in his notice of appeal. Senator Rand moved for its adoption and the motion carried. Senator Rand offered a third amendment regarding insurers providing certain life insurance information to funeral directors. Senator Rand moved for its adoption and the motion carried. Senator Rand moved for a favorable report and to refer the bill to the Senate Finance Committee. The motion carried. A copy of the bill, the summary and the three amendments is attached.

H.B. 1637 – Modernize Precious Metal Business Permitting.

Representative Samuelson was recognized to explain the bill. Senator McKissick moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS modernizes the record keeping of precious metals purchases by dealers; subjects all dealers in precious metals to similar record-keeping requirements, increases precious metals permitting fees, requires that a criminal history record check be conducted on employees of precious metals dealers, and makes various other changes to the precious metals permitting statutes. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1151 – Res. Lead-Based Paint Hazards/Renovations.

Representative Farmer-Butterfield was recognized to explain the bill. It establishes requirements for certification of persons performing lead-based paint renovation work in certain residential housing and child-occupied facilities; and requires accreditation of renovation trainers and renovation training courses. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 11:18 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, July 20, 2009

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

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

S.B. **516** Community Association Managers Licensure.

Draft Number:	15316
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 15, 2009

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

FAVORABLE

H.B.(CS #1) **1084** Revise LPG Dealer Requirements.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

H1084 – Sen. Weinstein

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 16, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Carol Durrell	State Health Plan
JOHN LAWTON	CAI
John McInerney	CAI
Leslie Arnold	SOG-Daily Bulletin
Henry Jones	Attorney Raleigh
BILL RUSTIN	
Dana Blanding	citizen of NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Bell & Assoc.
	MWC
Suzanne Melysz	SEANC
TED Hamby	NC DOI
Lauren Whaley	NC Credit Union League
Charlie Moody	NC REC
	JD, ALPA
DAVID BARNES	Poyner Spruill
Kathryn Mullican	BCBSNC
	Hunton's Wms.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hollis	Kelly Slater
Fitz Barringer	
Spencer Robinson	
Sam Slater	
Ashley J Bell	American Cancer Society

Senate Commerce Committee
Thursday, July 16, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1084	Revise LPG Dealer Requirements.	Rep. Hill
HB 1485	Insurance/Health Care Provider Relationship.	Rep. England Rep. Neumann Rep. Steen Rep. Barnhart
SB 516	Community Association Managers Licensure.	Sen. Hunt

Adjournment

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.

HOUSE BILL 1084:
Revise LPG Dealer Requirements

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 15, 2009
Introduced by:	Rep. Hill	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee 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-SMRG-91(e2) v1

Brad Krehely and Bill Patterson, Staff Attorneys, contributed substantially to the drafting of this summary.

HOUSE BILL 1485

Committee Substitute Favorable 5/11/09
Committee Substitute #2 Favorable 5/13/09

Short Title: Insurance/Health Care Provider Relationship. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO REFORM THE PROCESS FOR RECOVERY OF OVERPAYMENTS TO PROVIDERS BY INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-225 reads as rewritten:

"**§ 58-3-225. Prompt claim payments under health benefit plans.**

...

(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds ~~and~~ and, if the matter is not resolved pursuant to this subsection, by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than ~~30~~ 90 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery. The recovery of overpayments or offsetting of future payments may be made not more than two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor. Recovery of overpayments pursuant to this subsection shall be limited to the actual claims for which the insurer can provide the health care provider or facility with (i) the patient's name and identification number, (ii) the service date, (iii) the payment amount received by the health care provider or facility for the claim, and (iv) an explanation of the proposed revised payment amount which includes at a minimum the change in the code used, the amount of the revised payment, and the reason for the change in code. The requirements in the preceding sentence do not apply if the insurer provides documented evidence of fraud or other intentional misconduct by the health care provider or health care facility or its agents. If a health care provider or health care facility disputes a request for an overpayment recovery by the insurer, then the provider or facility may appeal the request within 45 days of receipt of the request for recovery. The insurer shall provide an internal appeals process for adjudicating such disputes within 90 days of the health care provider or health care facility commencing an appeal. If, within 150 calendar days after an insurer provides a health care provider or health care facility written notice of a demand for recovery of overpayments, the provider or facility has not provided a refund of an overpayment or an appeal of an alleged overpayment is still ongoing, then the insurer may seek recovery by offsetting future payments.

The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an ~~insurer~~ insurer, including a demand for recovery of overpayments under subsection (h) of this section that is made in bad faith, subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) Expired January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

SECTION 2. The Department of Insurance shall study the advisability of and need for an independent claims review process for disputes between insurers and providers analogous to that provided for appeals by covered persons of noncertification decisions by Part 4 of Article 50 of Chapter 58 of the General Statutes. The Department shall report its findings, including proposed legislation, to the General Assembly no later than April 1, 2011.

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

HOUSE BILL 1485:
Insurance/Health Care Provider Relationship

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 29, 2009
Introduced by:	Reps. Steen, Barnhart, Neumann, England	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1485 would extend the notice period required to be given by an insurer seeking recovery of overpayment or offsetting of future payments to a health care provider or facility and limit recovery of overpayments by insurers to the actual claims for which the insurer can provide specific detail, unless the insurer provides documented evidence of fraud or other intentional misconduct by the provider, facility or its agents. It would establish a process for the filing and adjudication of provider or facility appeals disputing the insurer's requested overpayment recovery, and would direct insurers to provide internal appeals processes for adjudicating the disputes within 90 days. It would also allow insurers to recover overpayments by offsetting future payments if, within 150 days of the insurer providing notice requesting recovery, the provider or facility has not provided a refund of an overpayment or an appeal of an alleged overpayment is still ongoing.***

CURRENT LAW: Subsection (h) of G.S. 58-3-225 (the "prompt payment" statute), provides the following procedures and timelines for recovery of overpayments by insurers to health care providers or facilities:

- Before seeking overpayment recovery from or offsetting payments to a health care provider or facility, the insurer must provide give 30 days written notice.
- Insurers may recover overpayments to providers or facilities *and* to offset future payments to the providers up to two years after of the original claim payment.
- Violations by an insurer subjects the insurer to sanctions restitution and monetary penalties from of $100-$1,000).

BILL ANALYSIS:

Section 1 amends G.S. 58-3-225(h) to do the following:

- Extend, from 30 to 90 days, the notice an insurer must give to a health care provider or facility of the insurer's intent to seek recovery of overpayment of claims.
- Limit recovery of overpayments to actual claims for which the insurer can provide the health care provider or facility with the patient name and ID number, service date, claim payment amount, and an explanation of the proposed revised payment amount. This requirement is waived if the insurer provides documented evidence of fraud or other intentional misconduct by the provider, facility or its agents.
- Allow providers and facilities to appeal insurers' requests for recovery within 45 days of receiving a request.
- Direct insurers to provide an internal appeals process to adjudicate disputed requests for recovery within 90 days of commencement of the appeal.
- Allow insurers to seek recovery from providers or facilities by offsetting future payments if no refund of overpayment has been made or if an appeal is ongoing 150 days after the insurer has given the provider or facility written notice of its demand for recovery of overpayment.

- Makes bad faith demands for recovery of overpayments a violation punishable monetary penalties from of $100-$1,000

Section 2 directs the Department of Insurance to study the advisability of and need for an independent claims review process for disputes between insurers and providers. The Department must report its findings, including proposed legislation, to the General Assembly by April 1, 2011.

EFFECTIVE DATE: The act is effective when it becomes law. Section 1 applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

**This summary was substantially contributed to by Ben Popkin, House Insurance Committee Counsel and Kara McCraw, House Judiciary II Committee Counsel..*

H1485-SMRC-60(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: House Bill 1485 (Third Edition)

SHORT TITLE: Insurance/Health Care Provider Relationship.

SPONSOR(S):

SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: House Bill 1485 (Third Edition) amends the prompt payment law, under G.S. 58-3-225, to change requirements with respect to claims payment recoveries involving overpayments between insurers and health care providers and facilities. The proposed changes include increasing the notice requirement an insurer must give a health care provider or facility regarding a potential overpayment recovery and limiting the recovery of overpayments to claims where the insurer can identify the specific patient, date of service, claim amount, etc. The proposed changes would also require an insurer to provide a brief explanation of why a proposed change in the original claim amount paid is necessary. For overpayment recoveries sought by an insurer as a result of documented fraud the proposed requirements do not apply.

The proposed change applies to the Plan by cross reference under G.S. 135-44.4(28) which applies the prompt payment law to the Plan as if it were an insurer regulated under G.S. 58-3-225.

EFFECTIVE DATE: When it becomes law.

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for Teachers and State Employees, estimates that the proposed legislation will increase annual administrative costs to the Plan by $160,000 (excluding impact to cash flow) based on information provided by the Plan's Claims Processing Contractor. Aon Consulting further expects the legislation will have an impact to annual medical claims costs incurred by the Plan, but notes that these costs are not quantifiable based on available information.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, comments that annual administrative costs (including impact to cash flow) for the Plan may increase in a range of $180,000 to $260,000 based on information provided by the Plan's Claims Processing Contractor. Hartman notes that potential impact on the Plan's annual medical claims costs, as a result of the proposed extended time line for the Plan's Claims Processing Contractor to initiate an action to seek overpayment recoveries, is not quantifiable based on available information.

As of July 1, 2009, the State will continue to finance the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts will be derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage will be paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.5 billion for FY 2009-10 and $2.7 billion for FY 2010-11. The Plan's PPO benefit design will include two alternative benefit levels listed below:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums; and

2) The "Standard" 80/20 plan.

The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under both plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised Summer 2008) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year were projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan were expected to be $2.4 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss was projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses were expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year.

Financial Projection (Revised April 2009) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $49.0 million from Medicare Part D subsidies, $3.3 million from investment earnings, and $250.0 million from a direct General Fund appropriation from the Rainy Day Fund (Savings Reserve Account) for a total of approximately $2.6 billion in receipt income for the year. The $250 million from a direct General Fund appropriation was provided by Session Law 2009-16 (Senate Bill 287) to finance a shortfall in funds available to pay health care benefits, administrative costs, and adequately fund the Plan's beginning cash balance on July 1, 2009. Projected disbursements from the Plan are expected to be $2.4 billion in claim-payment expenses and $180.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $7.1 million for the fiscal year, assuming a 9% annual claims growth trend.

Financial Projection 2009-11 Biennium (April 2009) – Session Law 2009-16 (Senate Bill 287) appropriates funds from various sources, authorizes annual premium rate increases, makes various benefit and provider related changes to achieve financial savings, and directs other various changes to the Plan. The enacted law also appropriates the sum of $250 million from the Savings Reserve Account ("Rainy Day

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	35,254	533,204	98,351	666,809	100%
Percent of Total	5.3%	80.0%	14.7%	100.0%	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	13,481	401,253	66,319	481,053

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	100.0%	100.0%	100.0%	100.0%

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 1485 (3rd Edition): An Act to Reform the Process For Recovery of Overpayments to Providers By Insurers," June 17, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, " House Bill 1485 (3rd Edition): Reform Process of Overpayment to Providers", June 18, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

"HB 1485, Insurance/Health Care Provider Relationship, Financial Impact Analysis", State Health Plan for Teachers and State Employees, June 18, 2009.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: June 22, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

HOUSE BILL 1485 (3RD EDITION)

REFORM PROCESS OF OVERPAYMENT TO PROVIDERS

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

June 2009

REFORM PROCESS OF OVERPAYMENT TO PROVIDERS

PLAN CHANGES

The proposed legislation defines administrative processes and disclosure requirements for the recovery of overpayments made to health care providers or health care facilities. The full text of the bill is attached to this actuarial note.

PROJECTED COSTS

	Based on Midpoint Increase (in millions)		
Plan Design Change	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Changes for recovery of overpayments to providers	Fiscal impact cannot be quantified		

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- Medical fiscal impact considerations and administrative cost estimates related to the proposed changes outlined in this bill were provided to Aon by State Health Plan based on information received from the Plan's Claims Processing Contractor. This Financial Impact Analysis is attached to this actuarial note.
- Annual administrative cost, including Full Time Equivalents and other administrative costs, is projected to be $160,000 per year.
- Aon expects the bill will have a fiscal impact on the Plan's medical cost; however, we do not believe the impacts can be quantified for purposes of an actuarial note.

H1485

Insurance / Health Care Provider Relationship

Financial Impact Analysis

This impact analysis was developed based on information provided by BCBSNC.

Bill Summary

- Revises overpayment recovery requirements **(Section h of G.S. 58-3-225)** to:
  - Require a 150 day timeline prior to recovering overpayments from future payments
  - Impose new and detailed requirements by claim in refund requests "unless there is documented evidence of fraud or other intentional misconduct by the health care provider, health care facility or its agents"

I. **Impacts of Change to (G.S.58-3-225, Section h) Prompt Claim Payments under health plans**

- **Assuming this subsection of the Prompt Pay Legislation applies to the State Health Plan, these new provisions could reduce BCBSNC's ability to seek and receive reimbursement for overpayments to providers or to deny or withhold payment on State Health Plan's behalf in cases where there is a reasonable belief of fraud or other intentional misconduct. The impacts are as follows:**
  - Imposing new Notice Requirements delaying BCBSNC's ability to seek refunds on SHP's behalf through future claims payments for at least 150 days
    - **Annual Estimated Cost Impact to State Health Plan: $100,000**
  - Imposing new and detailed requirements to calculate overpayments on a claim-by-claim basis and including specific claims coding in refund requests "unless there is documented evidence of fraud or other intentional misconduct by the health care provider, health care facility or its agents"
    - Estimated Annual FTE Cost to Administer New Requirements: 1 to 2 FTE's, plus overhead, or $80,000--$160,000
    - Estimated Loss in Ability to Recover Overpayments: Although there is an indication that these new requirements may reduce BCBSNC's ability to collect overpayments on SHP's behalf, SHP cannot validate the impact.
    - Recoding the BCBSNC systems to set up new refund request processes and timelines; SHP portion: **Not Yet Available**
  - Annual Costs--$260,000

II. **Assumptions**

- FTE requirements are estimated based on typical staffing requirements attributable for administration of the State Health Plan by BCBSNC.
- Loss of savings due to new overpayment recovery provisions in the Prompt Pay Law assumes State Health Plan is subject to all of G.S. 58-3-225.

NOTE: Analysis / Estimates Prepared by State Health Plan for Teachers and State Employees Based on Information from Blue Cross and Blue Shield of North Carolina

The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an ~~insurer~~ insurer, including a demand for recovery of overpayments under subsection (h) of this section that is made in bad faith, subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) Expired January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

SECTION 2. The Department of Insurance shall study the advisability of and need for an independent claims review process for disputes between insurers and providers analogous to that provided for appeals by covered persons of noncertification decisions by Part 4 of Article 50 of Chapter 58 of the General Statutes. The Department shall report its findings, including proposed legislation, to the General Assembly no later than April 1, 2011.

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to reviews by insurers of claims for possible overpayment of claim payments made on or after that date and to health care provider or health care facility demands for refunds from insurers for claims originally adjudicated on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1485

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

H1485-ARC-17 [v.1]

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

Date _____,2009

Senator Blue

moves to amend the bill on page 2, line 32, by deleting the word "April" and substituting "March".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1485

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

H1485-ARC-21 [v.2]

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

Date 1-14-09 ~~,2009~~

Senator Clary

moves to amend the bill on page 1, lines 2-3, by deleting the lines and substituting the following:

"AN ACT TO CLARIFY THE SPECIFIC INFORMATION AN INSURER MUST PROVIDE WHEN RECOVERING OVERPAYMENTS FROM A HEALTH CARE PROVIDER OR A HEALTH CARE FACILITY.";

and on page 1, lines 5-36, by deleting the lines and substituting the following:

SECTION 1. G.S. 58-3-225(h) reads as rewritten:

"(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility for specific claims by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than 30 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care ~~facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery.~~ facility. The written notice required under this subsection shall include all of the following information: (i) the patient's name and identification number, (ii) the service date, (iii) the payment amount received by the health care provider or facility for the claim, and (iv) an explanation of the proposed revised payment amount which includes at a minimum the change in the code used, the amount of the revised payment, and the reason for the change in code. The requirements in the preceding sentence do not apply if the insurer provides documented evidence of fraud or other intentional misconduct by the health care provider or health care facility or its agents. The recovery of overpayments or offsetting of future payments may be made not more than two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor.";

and on page 2, lines 1-27, by deleting the lines and substituting the following:

"The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may

include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

and on page 2, lines 33-36, by deleting the lines and substituting the following:

"**SECTION 3.** Section 1 becomes effective October 1, 2009 and applies to written notices issued by insurers on or after that date for the recovery of overpayments from health care providers or health care facilities. The remainder of the act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: Proposed Amendment to House Bill 1485 (H1485-ARC-21 [v.2])

SHORT TITLE: Insurance/Health Care Provider Relationship.

SPONSOR(S): Representatives Barnhart, England, Steen, and Neumann

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SYSTEM OR PROGRAM AFFECTED: State Health Plan for Teachers and State Employees (Plan).

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts; premium payments for dependents of active employees and retired employees of State agencies and universities, local public schools and local community colleges; premium payments for coverages selected by eligible former employees; premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, and certain authorized local governments.

BILL SUMMARY: The proposed amendment modifies House Bill 1485 (Third Edition) to do the following:

1) Changes the bill title to "AN ACT TO CLARIFY THE SPECIFIC INFORMATION AN INSURER MUST PROVIDE WHEN RECOVERING OVERPAYMENTS FROM A HEALTH CARE PROVIDER OR A HEALTH CARE FACILITIY";

2) Requires a health insurer to include in a written notice to a medical provider, for the purposes of seeking a recovery for a thought to be previously overpaid paid medical claim, the following information:
   i) a patient's name and identification number;
   ii) the service date of the claim;
   iii) the payment amount received by the health care provider or facility; and
   iv) an explanation of the proposed revised payment amount.

   The written notice requirements stated above would not apply in the case of fraud or other intentional misconduct by a health care provider or facility.

3) The proposed amendment also deletes from the third edition of the bill extended timeframes limiting how quickly an insurer can seek to recovery a potential overpayment.

EFFECTIVE DATE: Section 1 of the bill would become effective October 1, 2009. The remainder of the bill would become effective when it becomes law.

ESTIMATED IMPACT ON STATE:

Aon Consulting, the consulting actuary for the State Health Plan for the Teachers and State Employees, estimates that implementation of the proposed amendment will not have an impact on the Plan.

Hartman & Associates, the consulting actuary for the General Assembly's Fiscal Research Division, estimates that implementation of the proposed amendment will not have an impact on the Plan.

ASSUMPTIONS AND METHODOLOGY: The actuarial analyses used by each respective consulting actuary are on file with the Fiscal Research Division. Copies of each respective consulting actuary's analysis, including assumptions, are also attached to the original copy of this Legislative Actuarial note.

Given that the bill affects a potential legal and administrative relationship between the Claims Processing Contractor (CPC) and medical providers under contract with the CPC, no independent actuarial analysis of data was possible. All assumptions and cost estimates reported by each consulting actuary were provided by the Plan and were not independently evaluated.

Based on information provided by the Plan's Claims Processing Contractor, Blue Cross Blue Shield of North Carolina, the Plan's claims overpayment recovery experience for calendar year 2008 indicates that 14% of total recoveries, or $2.2 million, occur beyond 365 days of the original date of claims payment. For the Plan's claims in the 2008 calendar year subject to an overpayment recovery, approximately $16 million in total overpayment recoveries were collected within the two year period currently allowed under G.S. 58-3-225. Of this total amount an estimated $12 million, or 75% of total recoveries, are cash recoveries and the other 25% is from offsetting future reimbursements to affected providers or facilities (approximately $1.7 million).

The current statutory requirement allowing an insurer a period of up to two years from the date of an original claim to recover a potential overpayment remains unchanged.

Summary Information and Data about the Plan

The Plan administers health benefit coverage for active employees from employing units of State agencies and departments, universities, local public schools, and local community colleges. Eligible retired employees of authorized employing units may also access health benefit coverage under the Plan. Eligible dependents of active and retired employees are authorized to participate in the Plan provided they meet certain requirements. Employees and retired employees of selected local governments may also participate in the Plan under certain conditions. Members of fire, rescue squads, and the National Guard may also obtain coverage under the Plan provided they meet certain eligibility criteria.

As of July 1, 2008, the State finances the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts are derived through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage are paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.6 billion for FY 2008-09. The Plan's PPO benefit design includes three alternative benefit levels offered to plan members. The three alternative benefit levels include the following:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums;

2) The "Standard" 80/20 plan; and

3) The "Plus" 90/10 plan with enhanced benefits via lower out-of pocket requirements as compared to the other PPO plan alternatives offered.

As of July 1, 2009, the State will continue to finance the Plan on a self-funded basis and administers benefit coverage under a Preferred Provider Option (PPO) arrangement. The Plan's receipts will be derived

through premium contributions, investment earnings and other receipts. Premiums for health benefit coverage will be paid by (1) employing agencies for active employees, (2) the Retiree Health Benefit Fund for retired employees, and (3) employees and retirees who elect dependent coverage. Total requirements for the Plan are estimated to be $2.5 billion for FY 2009-10 and $2.7 billion for FY 2010-11. The Plan's PPO benefit design will include two alternative benefit levels listed below:

1) The "Basic" 70/30 plan that offers higher out-of pocket requirements in return for lower fully contributory dependent premiums; and

2) The "Standard" 80/20 plan.

The Basic and Standard plans offer coverage to employees and retired employees on a noncontributory basis. Coverage for dependents under both plans is offered on a fully contributory basis.

Financial Condition

Financial Projection (Revised Summer 2008) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year were projected to be $2.3 billion from premium collections, $53.9 million from Medicare Part D subsidies, and $2.7 million from investment earnings, for a total of slightly over $2.3 billion in receipt income for the year. Projected disbursements from the Plan were expected to be $2.4 billion in claim-payment expenses and $168.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating loss was projected to be approximately $264.4 million for the fiscal year, assuming a 9% annual claims growth trend.

Projected operating losses were expected to deplete the Plan's cash balance of $139.8 million and leave it without sufficient operating resources to continue operations for the fiscal year.

Financial Projection (Revised April 2009) for FY 2008-09 -- For the fiscal year beginning July 1, 2008, the Plan began its operations with a beginning cash balance of $139.8 million. Receipts for the year are projected to be $2.3 billion from premium collections, $49.0 million from Medicare Part D subsidies, $3.3 million from investment earnings, and $250.0 million from a direct General Fund appropriation from the Rainy Day Fund (Savings Reserve Account) for a total of approximately $2.6 billion in receipt income for the year. The $250 million from a direct General Fund appropriation was provided by Session Law 2009-16 (Senate Bill 287) to finance a shortfall in funds available to pay health care benefits, administrative costs, and adequately fund the Plan's beginning cash balance on July 1, 2009. Projected disbursements from the Plan are expected to be $2.4 billion in claim-payment expenses and $180.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.6 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $7.1 million for the fiscal year, assuming a 9% annual claims growth trend.

Financial Projection 2009-11 Biennium (April 2009) – Session Law 2009-16 (Senate Bill 287) appropriates funds from various sources, authorizes annual premium rate increases, makes various benefit and provider related changes to achieve financial savings, and directs other various changes to the Plan. The enacted law also appropriates the sum of $250 million from the Savings Reserve Account ("Rainy Day Fund") of the General Fund for the 2008-09 fiscal year. The following summarized financial projections by

fiscal year for the 2009-11 biennium assume the changes enacted in Session Law 2009-16 (Senate Bill 287).

For the fiscal year beginning July 1, 2009, the Plan is projected to begin its operations with a beginning cash balance of $146.9 million. Receipts for the year are projected to be $2.4 billion from premium collections, $56.3 million from Medicare Part D subsidies, and $8.0 million from investment earnings for a total of approximately $2.5 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.3 billion in claim-payment expenses and $185.6 million in administration and claims-processing expenses for projected total expenses of nearly $2.5 billion for FY 2008-09. The Plan's net operating income is projected to be approximately $14.8 million for the fiscal year, assuming a 9% annual claims growth trend and an annual premium increase of 8.9% effective July 1, 2009.

For the fiscal year beginning July 1, 2010, the Plan is projected to begin its operations with a beginning cash balance of $146.9 million. Receipts for the year are projected to be $2.7 billion from premium collections, $50.4 million from Medicare Part D subsidies, and $8.8 million from investment earnings for a total of approximately $2.7 billion in receipt income for the year. Projected disbursements from the Plan are expected to be $2.5 billion in claim-payment expenses and $191.7 million in administration and claims-processing expenses for projected total expenses of nearly $2.7 billion for FY 2010-11. The Plan's net operating income is projected to be approximately $30.6 million for the fiscal year, assuming a 9% annual claims growth trend and an annual premium increase of 8.9% effective July 1, 2010.

Other Information

Historically, the Plan has applied a premium increase in October of the first fiscal year of a biennium. However, the annual premium increases authorized in Session Law 2009-16 (Senate Bill 287) changes that methodology to an annual increase at the beginning of each fiscal year of the 2009-11 biennium.

Additional assumptions include Medicare benefit "carve-outs," cost containment strategies including prior approval for certain medical services, utilization of the "Blue Options" provider network, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection, and other authorized actions by the Executive Administrator and Board of Trustees to manage the Plan to maintain and improve the Plan's operation and financial condition where possible. Claim cost trends are expected to increase at a rate of 9% annually according to the Plan's consulting actuary. Investment earnings are based upon a 4.5% return on available cash balances.

Enrollment Data as of December 31, 2008

I. No. of Participants	Basic	Standard	Plus	Total	Percent of Total
Actives					
Employees	11,623	271,243	47,687	330,553	49.6%
Dependents	20,454	115,875	28,156	164,485	24.7%
Sub-total	32,077	387,118	75,843	495,038	74.2%
Retired					
Employees	1,726	127,081	17,967	146,774	22.0%
Dependents	1,117	14,935	3,476	19,528	2.9%
Sub-total	2,843	142,016	21,443	166,302	24.9%
Former Employees with Continuation Coverage					
Employees	60	1,349	344	1,753	0.3%
Dependents	61	501	182	744	0.1%
Sub-total	121	1,850	526	2,497	0.4%
Firefighters, Rescue Squad & National Guard					
Employees	-	3	2	5	0.0%
Dependents	-	3	-	3	0.0%
Sub-total	-	6	2	8	0.0%
Local Governments					
Employees	72	1,577	319	1,968	0.3%
Dependents	141	637	218	996	0.1%
Sub-total	213	2,214	537	2,964	0.4%
Total					
Employees	13,481	401,253	66,319	481,053	72.1%
Dependents	21,773	131,951	32,032	185,756	27.9%
Grand Total	**35,254**	**533,204**	**98,351**	**666,809**	**100%**
Percent of Total	**5.3%**	**80.0%**	**14.7%**	**100.0%**	

II. Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	2,684	328,635	49,246	380,565
Employee Child(ren)	4,958	36,903	8,589	50,450
Employee Spouse	2,274	18,145	4,469	24,888
Employee Family	3,565	17,570	4,015	25,150
Total	**13,481**	**401,253**	**66,319**	**481,053**

Percent Enrollment by Contract	Basic	Standard	Plus	Total
Employee Only	19.9%	81.9%	74.3%	79.1%
Employee Child(ren)	36.8%	9.2%	13.0%	10.5%
Employee Spouse	16.9%	4.5%	6.7%	5.2%
Employee Family	26.4%	4.4%	6.1%	5.2%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Enrollment Data Continued

III. Enrollment by Sex	Basic	Standard	Plus	Total
Female	18,837	334,917	61,752	415,506
Male	16,417	198,287	36,599	251,303
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Sex	Basic	Standard	Plus	Total
Female	53.4%	62.8%	62.8%	62.3%
Male	46.6%	37.2%	37.2%	37.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

IV. Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	17,390	136,277	27,211	180,878
30 to 44	8,125	107,375	17,315	132,815
45 to 54	5,164	94,548	18,277	117,989
55 to 64	3,195	102,901	23,452	129,548
65 & Over	1,380	92,103	12,096	105,579
Total	**35,254**	**533,204**	**98,351**	**666,809**

Percent Enrollment by Age	Basic	Standard	Plus	Total
29 & Under	49.3%	25.6%	27.7%	27.1%
30 to 44	23.0%	20.1%	17.6%	19.9%
45 to 54	14.6%	17.7%	18.6%	17.7%
55 to 64	9.1%	19.3%	23.8%	19.4%
65 & Over	3.9%	17.3%	12.3%	15.8%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

V. Retiree Enrollment by Category	Employee	Dependents	Total
Non-Medicare Eligible	49,534	12,080	61,614
Medicare Eligible	97,240	7,448	104,688
Total	**146,774**	**19,528**	**166,302**

Percent by Category (Retiree)	Employee	Dependents	Total
Non-Medicare Eligible	33.7%	61.9%	37.0%
Medicare Eligible	66.3%	38.1%	63.0%
Total	**100.0%**	**100.0%**	**100.0%**

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 1485 Amendment (H1485-ARC-21 [v.2], An Act to Clarify the Specific Information an Insurer Must Provide When Recovering Overpayments From a Health care Provider or Health care Facility", July 11, 2009, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "House Bill 1485, Proposed Amendment, H1485-ARC-21 [v.2], Clarify Information Required For Recovery of Overpayments From a Provider", July 13, 2009, original of which is on file with the State Health Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: July 13, 2009

NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

HOUSE BILL 1485
PROPOSED AMENDMENT
H1485-ARC-21 [V.2]

CLARIFY INFORMATION REQUIRED FOR RECOVERY OF OVERPAYMENTS FROM A PROVIDER

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30305

May 2009

ACTUARIAL STATEMENT

The North Carolina State Health Plan for Teachers and State Employees has requested that Aon Consulting prepare an Actuarial Note in response to House Bill 1485 Proposed Amendment H1485-ARC-21 [v.2] entitled "An Act To Clarify The Specific Information An Insurer Must Provide When Recovering Overpayments From A Health Care Provider Or A Health Care Facility."

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.



July 13, 2009

Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

Date



July 13, 2009

Kirsten R. Schatten, A.S.A., M.A.A.A.
Assistant Vice President

Date

CLARIFY INFORMATION REQUIRED FOR RECOVERY OF OVERPAYMENTS FROM A PROVIDER

PLAN CHANGES

The proposed legislation defines administrative processes and disclosure requirements for the recovery of overpayments made to health care providers or health care facilities. The full text of the bill is attached to this actuarial note.

PROJECTED COSTS

	Based on Midpoint Increase (in millions)		
Plan Design Change	2009-2010 Fiscal Year Cost	2010-2011 Fiscal Year Cost	Total Biennium Cost
Clarify information required for recovery of overpayments to providers	No financial impact.		

* Based on total projected expenses of $2,486,310,245 and $2,681,918,655 for the 2010 and 2011 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- No claims cost/savings is projected for recovery of overpayments as the requirements in this bill only change administrative processes and disclosures.
- Administrative costs for implementation of the new requirements are not expected to be significant.

include applicable interest under this section. The period for which such recoveries may be made may not exceed two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

and on page 2, lines 33-36, by deleting the lines and substituting the following:

"**SECTION 3.** Section 1 becomes effective October 1, 2009 and applies to written notices issued by insurers on or after that date for the recovery of overpayments from health care providers or health care facilities. The remainder of the act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HARTMAN & ASSOCIATES, LLC
ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

hartman@triad.rr.com

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668 Link Rd
Lexington, NC 27295

July 11, 2009

Mr. Mark Trogdon
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 1485 (3rd edition) Amendment (H1485-ARC-21 [v.2]): An Act to Clarify the Specific Information an Insurer Must Provide When Recovering Overpayments From a Health Care Provider or Health Care Facility

Dear Mr. Trogdon:

This third edition of the bill amends G.S. 58-3-225 to modify the prompt claim payment requirements for health benefit plans. These changes include modifications of the timeframe for recovery of overpayments by plans to health care providers and facilities. Under G.S. 135-44.4(28), these provisions apply to the North Carolina State Health Plan for Teachers and State Employees (the "Plan").

This amendment removes the changes to the overpayment timeframes currently in the bill. The amendment includes the change which requires that when seeking overpayment recovery, the insurer must provide the name and identification number of the patient, the service date, the payment amount, and an explanation of the revised payment including at least the change in code used and the reason for the change.

These changes are effective October 1, 2009 and apply to written notices for recoveries issued by insurers on or after that date.

Information provided by the Plan and its claims processor indicates that the amended bill will have no financial impact on the Plan.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, FCA, EA
Consulting Actuary

MVH/mt

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 516
PROPOSED COMMITTEE SUBSTITUTE S516-CSROf-70 [v.2]

7/15/2009 7:06:27 PM

Short Title: Community Association Managers Licensure. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE COMMUNITY ASSOCIATION MANAGERS LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93A of the General Statutes is amended by adding the following new Article to read:

"Article 6.

"Community Association Managers Licensure Act.

"**§ 93A-85. Short title.**

This Article shall be known as the 'North Carolina Community Association Managers Licensure Act'.

"**§ 93A-86. Purpose.**

The General Assembly finds that persons who provide community association management in North Carolina affect the public health, safety, and welfare and that the mandatory licensure of persons who provide community association management for compensation is necessary to ensure minimum standards of competency. It is the purpose and intent of this Article to protect the public from persons unqualified to provide community association management and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 93A-87. Definitions.**

The following definitions apply in this Article:

(1) Board. – The North Carolina Licensure Board for Community Association Managers.

(2) Compensation. – A fee or anything else of value or the promise thereof.

(3) Community association. – An association or organization of the owners of residential condominiums, time-shares, townhouses, apartments, or lots in a planned community or subdivision that is subject to a uniform scheme of restrictive covenants, in which owner membership is made mandatory by covenant, contract, or deed, and is authorized to collect dues, assessments, or other payments from owner members.

(4) Community association manager. – Any person who, for compensation or the expectation thereof, performs two or more of the following acts or services for a community association:

a. Acts with the authority of a community association in its business, legal, financial, or other transactions with association members and nonmembers.
b. Executes the resolutions and decisions of the government of a community association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw.
c. Collects, disburses, or otherwise exercises dominion or control over money or other property belonging to a community association.
d. Prepares budgets, financial statements, or other financial reports for a community association.
e. Negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of a community association.
f. Offers or solicits to perform any of the acts or services in sub-subdivisions a. through f. of this subdivision on behalf of a community association.

(5) License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to provide community association management services as defined in this Article.

(6) Licensee. – A person who has been issued a license under this Article.

"**§ 93A-88. License required.**

(a) On or after October 1, 2010, it shall be unlawful for any person in this State to act as a community association manager, directly or indirectly engage in the business of community association management, hold himself or herself out to be a community association manager, or use the title 'Licensed Community Association Manager' or 'Community Association Manager' without first obtaining a license from the Board as provided in this Article.

(b) The Board may issue a license to provide community association management to an individual. The Board shall not issue a license to provide community association management to a partnership, association, corporation, limited liability company, or other business entity. However, a licensed community association manager may perform community association management for or on behalf of a partnership, association, corporation, limited liability company, or other business entity, conduct business as a business entity, or enter into and enforce contracts as a business entity.

"**§ 93A-89. Exemptions.**

The provisions of this Article shall not apply to:

(1) An officer or member of a community association who, for no compensation or expectation thereof, performs the acts or services of a community association manager.

(2) The acts or services of an attorney-at-law who is engaged to represent a community association or community association manager in any business that constitutes the practice of law.

(3) The acts or services of a real estate broker hired by a community association to sell or rent real property belonging to the association.

(4) A trustee in bankruptcy, court-appointed receiver, or any other person acting under the express authority of an order issued by a court of competent jurisdiction.

(5) The acts or services of a certified public accountant acting solely in the capacity of a certified public accountant.

(6) A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association

management while performing clerical or ministerial functions under the direction and control of a licensed community association manager.

(7) A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association management who performs any of the acts or service described in G.S. 93A-87(4)a-e, under the direct supervision and control of a licensed community association manager.

(8) The person, including a governmental agency, redevelopment authority, or redevelopment commission, who undertook the development and who has a legal or equitable interest in the property developed and who provides community association management until not more than 30 days after conveyance of all of the units or lots (including units or lots which may be created pursuant to special declarant rights) to unit or lot owners other than the declarant.

"**§ 93A-90. North Carolina Licensure Board for Community Association Managers.**

(a) Membership. – The North Carolina Licensure Board for Community Association Managers is established. The Board shall consist of seven members appointed as follows:

(1) Four community association managers, two of whom shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

(2) A home builder appointed by the Governor, upon the recommendation of the North Carolina Home Builders Association.

(3) A licensed real estate broker appointed by the Governor, upon the recommendation of the North Carolina Association of Realtors.

(4) A public member who is not a professional in any of the categories in subdivisions (1) through (3) of this subsection, appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives.

Members of the Board shall be citizens of the United States and residents of this State.

(b) Terms. – Members of the Board shall be appointed for four-year staggered terms. Each Board member shall hold office until July 1 of the year in which the Board member's respective term expires and until his or her successor is appointed and qualified. No member may serve more than two consecutive full terms. Appointments made by the General Assembly shall be made in accordance with G.S. 120-121.

The initial Board members shall be appointed before October 1, 2009. Of the members initially appointed, the community association manager appointed by the Governor shall serve a one-year term. The community association manager appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and the licensed real estate broker shall serve two-year terms. One community association manager appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the home builder shall serve three-year terms. The remaining community association manager appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the public member shall serve four-year terms.

Upon the expiration of the terms of the initial Board members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of subsection (a) of this section for a term of four years and shall serve until a successor is appointed.

(c) Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed community association manager shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(e) Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) Officers. – The officers of the Board shall be a chair, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified. The chair of the Board shall be a licensed community association manager.

(g) Meetings. – The Board shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Board. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum.

"**§ 93A-91. Powers and duties of the Board.**

The Board has the power and duty to:

(1) Administer this Article.

(2) Issue interpretations of this Article.

(3) Adopt rules as may be necessary to carry out the provisions of this Article.

(4) Determine the qualifications and fitness of applicants for licensure and license renewal.

(5) Establish an examination and approve educational curricula for persons seeking licensure under this Article.

(6) Adopt and publish rules governing the ethics and standards of practice for persons licensed as community association managers and create educational programs, books, and materials for licensees and the general public concerning community associations, their organization and proper management, and the rights of members.

(7) Issue, renew, deny, suspend, and revoke licenses and investigate and discipline licensees as provided by this Article.

(8) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to enforce this Article and discipline persons licensed under this Article.

(9) Employ and discharge an executive director and other professional, clerical, investigative, and special personnel and to set the compensation and benefits for those persons.

(10) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(11) Adopt a seal by which it shall authenticate its proceedings, official documents, and licenses.

(12) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(13) Establish fees as allowed by the Article.

(14) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(15) Request and receive the assistance of State educational institutions or other State agencies.

(16) Establish continuing education requirements for persons licensed under this Article.

(17) Call upon the Attorney General to provide legal counsel and representation to the Board or, upon the approval of the Attorney General, to hire another attorney to represent the Board, provided that the cost of legal representation is borne by the Board.

"**§ 93A-92. Requirements for licensure; denial of licensure.**

(a) To be licensed as a community association manager, an applicant shall do all of the following:

(1) Submit a completed application to the Board on a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board or present evidence of one of the following:

a. Successful completion of the Professional Community Association Manager or the Association Management Specialist designation administered by the Community Associations Institute.

b. Successful completion of the Certified Manager of Community Association Certification Program administered by the National Board of Certification for Community Association Managers.

c. Attainment of the Certified Property Manager designation of the Institute of Real Estate Management Division, an affiliate of the National Association of Realtors.

d. Successful completion of any other program of education which, in the discretion of the Board, is equivalent to the programs described in sub-subdivisions a. through c. of this subdivision.

e. Possession of a valid license issued by another state or any political territory or jurisdiction acceptable to the Board if in the Board's opinion the requirements for that licensure are substantially the same as the requirements for licensure under this Article.

(3) Produce evidence of coverage by a fidelity bond in accordance with G.S. 93A-93.

(4) Demonstrate to the Board that the applicant possesses good moral character and the honesty, truthfulness, and integrity necessary to protect the interests of the public and promote public confidence in licensed community association managers.

(5) Pay the applicable fees.

(b) If the Board finds that an applicant has not demonstrated that the applicant possesses the character and fitness for licensure, the Board shall defer action on the applicant's application and shall notify the applicant in writing by first-class mail directed to the address provided by the applicant in the application. Within 60 days following the mailing of the notice, the applicant may request a hearing before the Board. Proceedings before the Board shall be governed by Article 3A of Chapter 150B of the General Statutes. At the hearing, the applicant shall have the burden of demonstrating the applicant's good character and fitness for licensure. If the applicant does not make a timely request for a hearing, the application shall be deemed denied.

"**§ 93A-93. Fidelity bonds; segregation of accounts.**

(a) Every community association manager engaged in community association management shall at all times be covered by a fidelity bond or an insurance policy complying with the provisions of this section.

(b) A fidelity bond required by this section shall be in an amount of at least twenty thousand dollars ($20,000) and shall:

(1) Be written by an insurance company authorized to write fidelity bonds in this State.

(2) Cover the community association manager and all or a portion of the employees and protect all or a portion of the community association funds in the custody of the community association manager or community association employees acting under the community association manager's supervision.

(3) Provide that the insurance company issuing the bond may not cancel, substantially modify, or refuse to renew the bond without giving 30 days' prior written notice to the Board, except in the case of nonpayment of premiums, in which case 10 days' prior written notice shall be given to the Board.

(4) Contain any other provisions as may be required by the Board.

(c) A licensee shall furnish the Board proof of required bond coverage before engaging in community association management activities and upon license renewal if the licensee continues to engage in community association management activities.

(d) The fidelity bond may be issued to an individual licensee naming the licensee as the insured party or may be issued to a community association management firm naming the firm, all affiliated licensees, and others as insured parties.

(e) A community association manager with custody, dominion, or control of money belonging to a community association or money belonging to a member of a community association shall comply with all the following:

(1) Safeguard and account for the money promptly and accurately.

(2) Promptly deposit the money into federally insured accounts in a bank, savings institution, or credit union lawfully doing business in North Carolina that consents to the jurisdiction of the Board for the examination of its records necessary to enforce this Article.

(3) Segregate the money in an account or accounts used exclusively for the deposit and maintenance of funds belonging only to one association and not commingle the money belonging to one association with money belonging to another association, the manager, or another person or entity.

(4) Obtain written authorization if any interest or other income earned by the money is to be paid to any person or party other than the association or member to whom the money belongs.

(5) Create and maintain books and records sufficient to demonstrate compliance with the provisions of this section and rules adopted by the Board.

(6) Upon depositing the money as provided in this subsection, expend, remit, or invest the money as directed by the association to whom the money belongs and provide an accurate account of any expenditure, remittance, or investment.

"**§ 93A-94. Fees; subsequent application.**

(a) The Board may impose the following fees, not to exceed the following amounts:

(1) Application for community association manager license $25.00
(2) Community association manager examination 75.00
(3) Issuance of license 150.00
(4) License renewal 100.00
(5) Late renewal 25.00
(6) Application for course approval 150.00
(7) Course approval renewal 75.00
(8) Course fee, per credit hour per licensee 5.00
(9) Credit for unapproved continuing education course 50.00
(10) Registration of community association 50.00

(11) Copies of Board rules or licensure standards shall be the cost of printing and mailing.

(b) An individual who applied for a license as a community association manager and failed the community association manager examination is not required to pay an additional application fee if the individual submits another application for a license as a community association manager within six months following the submission of the individual's first application. However, the individual shall pay the examination fee to be eligible to take the examination again.

"**§ 93A-95. License renewal; inactive license; lapsed license.**

(a) Renewal. – A license issued under this Article expires on September 30 of each year. A license may be renewed by filing an application for renewal according to procedures established by the Board and paying the required renewal fee. The Board shall renew the license of a person who files an application for renewal, pays the required renewal fee, and has fulfilled the continuing education requirements set by the Board. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board shall reasonably ensure that the courses needed to fulfill the requirement are available.

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee. However, late renewal of a license may not be granted more than five years after the license expires.

(c) Inactive License. – A licensed community association manager may apply to the Board to be placed on inactive status. An applicant for inactive status shall follow the procedure established by the Board. A licensed community association manager who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status. A community association manager on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. A community association manager on inactive status shall not perform any act or service for which licensure is required.

"**§ 93A-96. Continuing education.**

(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 renewing the license, 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. The Board shall determine the number of hours of continuing education a licensee is required to complete continuing education annually. However, the total number of credit hours shall not exceed eight credit 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.

(b) Fees. – The Board may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. Approval of a continuing education course shall be renewed annually. The Board may also require a course sponsor to pay a fee for each licensee completing an approved continuing education course conducted by the sponsor.

(c) Credit for Unapproved Course. – The Board may award continuing education credit for an unapproved course or related educational activity. The Board may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Board may charge a fee to the licensee for each unapproved course or activity submitted.

(d) Extension of Time. – The Board may, for good cause shown, grant extensions of time to licensees to comply with the requirements of this section. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the

licensee has satisfactorily completed the required continuing education courses, is in compliance with this section.

(e) Rules. – The Board may adopt rules regarding continuing education requirements, including rules that govern:

(1) The content and subject matter of continuing education courses.
(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
(3) The methods of instruction.
(4) The computation of course credit.
(5) The ability to carry forward course credit from one year to another.
(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.
(7) The procedures for compliance and sanctions for noncompliance.

"**§ 93A-97. Registration of community associations.**

On or before January 1 of each year, every community association whose membership includes the owners of 20 or more residential condominiums, townhouses, apartments, or lots or any combination thereof shall register the association with the Board and shall provide the Board with the following information about the association:

(1) The name and address of the association.
(2) The county where the property is located.
(3) The name and address of the community association's manager.
(4) Any other information the Board may require pursuant to rules adopted by the Board.

Registration is also required of any community association whose constituent parts include other community associations or organizations whose membership includes the owners of fewer than 20 residential condominiums, townhouses, apartments, or lots, but in the aggregate includes the owners of 20 or more properties or interests. The Board may charge each affected association an annual registration fee not to exceed fifty dollars ($50.00).

"**§ 93A-98. Disciplinary action by the Board.**

(a) The Board shall have the authority to take disciplinary action. Upon its own initiative or upon the complaint of any person, the Board may investigate the conduct of a licensed community association manager or any other person who acts or assumes to act in the capacity of a licensed community association manager. The Board may suspend or revoke a license issued under this Article or reprimand a licensee if, following a hearing, the Board finds that the licensee has:

(1) Obtained a license by means of fraud, deceit, or misrepresentation.
(2) Engaged in gross negligence or gross incompetence as a community association manager.
(3) Engaged in any act or service for which a license is required with a lapsed or inactive license.
(4) Made a willful misrepresentation of material fact.
(5) Failed within a reasonable time to account for or remit money belonging to a community association or another person coming into the community association manager's possession in his or her capacity as a community association manager.
(6) Commingled money belonging to a community association with the community association manager's own money or failed to deposit, maintain, or safeguard the money of a community association as required by G.S. 93A-93(e).
(7) Been adjudged legally incompetent.

(8) Paid or offered to pay a valuable consideration to any person for acts or services performed in violation of this Article.

(9) Failed to reasonably supervise an employee under G.S. 93A-89(6) or (7) to prevent a violation of this Article.

(10) Engaged in any other conduct that is fraudulent.

(11) Violated any rule adopted by the Board or any provision of this Article.

(b) The Board may also suspend or revoke the license issued to a community association manager when the licensee has been convicted in any court of competent jurisdiction in this State, another state, or the United States of the offenses of fraud, embezzlement, larceny, false pretenses, forgery, conspiracy, or any other offense involving dishonesty, breach of trust, or moral turpitude.

(c) In any case in which the Board may take disciplinary action authorized by this section, the Board may also impose reasonable conditions, restrictions, limitations, and probation upon the licensee.

(d) Hearings held pursuant to this section shall be governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

(e) The Board shall have authority to issue subpoenas in aid of its authority to compel the testimony of witnesses and to require any person or entity to produce documents for examination and copying by the Board's representatives. Subpoenas shall be signed by the Board Chairman, Executive Director, or legal counsel. Upon written request, the Board shall revoke a subpoena upon a showing that the subpoena does not describe the evidence sought with reasonable particularity, the evidence sought by the subpoena does not relate to a matter within the authority of the Board, or compliance with the subpoena is unreasonably burdensome. If any person should fail to comply with a subpoena issued by the Board, the Board may apply to the Superior Court of Wake County or any county where the subpoenaed person resides or does business for an order to compel the person to comply with a subpoena or to show cause why the subpoenaed person should not be held in contempt. The court may impose punishment for failure to comply with the Board's subpoena in the same manner as if the subpoena had been issued under the court's own authority. When the subpoena seeks the production of records of money belonging to a community association or association member held by a financial institution, the Board may obtain access to the records in accordance with G.S. 53B-5.

"**§ 93A-99. License is property of the Board; display of license; report address change.**

(a) A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by the Board, the community association manager to whom the license is issued shall return the license to the Board upon demand.

(b) A community association manager licensed by the Board shall display the license in a manner prescribed by the Board. A licensed community association whose address changes shall report the change to the Board.

"**§ 93A-100. Records.**

All persons licensed under this Article shall maintain full and accurate records of business engaged in pursuant to their licenses. Records shall include the written, signed contract, and the written report required by the standards of practice established by the Board. Licensees shall retain records no less than three years. Licensees shall furnish their records to the Board on demand without prior notice.

"**§ 93A-101. Violation a misdemeanor.**

A person who violates any provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense.

"**§ 93A-102. Injunctions.**

The Board may apply to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this

Article, the court may grant an injunction or a restraining order or take other appropriate action."

SECTION 2. G.S. 93A-6(a)(12) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this ~~Chapter,~~ Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this ~~Chapter,~~ Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this ~~Chapter,~~ Article, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

...

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued. However, a real estate broker who is also a licensed community association manager shall not be subject to disciplinary action by the Commission for handling and accounting for money belonging to a community association in compliance with Article 6 of this Chapter.

...."

SECTION 3. Any person who submits proof to the Board that the person has been actively engaged in business as a community association manager for compensation in this State for at least three consecutive years before the effective date of this act and pays the required fee for the issuance of a license shall be licensed without having to satisfy the requirements of G.S. 93A-92(a)(1) and (2), as enacted by Section 1 of this act. Proof of active engagement as a community association manager may be shown by evidence of the regular performance, over three or more years, of two or more of the acts or services enumerated in G.S. 93A-87. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of G.S. 93A-92.

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

SENATE BILL 516:
Community Association Managers Licensure

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	July 6, 2009
Introduced by:	Sen. Hunt	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S516-CSROf-70		

SUMMARY: ***Senate Bill 516 creates a new Article in Chapter 93A of the General Statutes entitled "Community Association Managers Licensure Act." The bill establishes a new licensing board and requires that all community association managers be licensed beginning October 1, 2010.***

[As introduced, this bill was identical to H762, as introduced by Rep. Gibson, which is currently in House Judiciary III, if favorable, Finance.]

BILL ANALYSIS: Senate Bill 516 establishes a new Article 6 in Chapter 93A to regulate community association managers. A community association manager is defined as a person who, for compensation, performs two or more of the following services on behalf of or with the authority of a community association:

- Handles business, legal, financial, or other transactions with association members and nonmembers.
- Executes decision of the governing body of the association or enforces the association's rights.
- Collects, disburses, or otherwise exercises control over the funds and property of the association.
- Prepares budgets, financial statements, or other financial reports for the association.
- Negotiates contracts, arranges for services, and purchases property and goods for the association.
- Offers or solicits to perform any of these acts or services for an association.

Beginning October 1, 2010, it shall be unlawful for any person to engage in the business of community association management without first obtaining a license. Licenses may only be issued to individuals, not to a business entity. However, the individual licensee may conduct business on behalf of or as a business entity.

The Licensure Board of Community Association Managers consists of seven members as follows: 2 community association managers appointed on the recommendation of the President Pro Tempore of the Senate; 1 community association manager and 1 public member appointed on the recommendation of the Speaker of the House of Representatives; 1 community association manager appointed by the Governor; 1 home builder appointed by the Governor on the recommendation of the NC Homebuilders Association; and 1 real estate broker appointed by the Governor on the recommendation of the NC Association of Realtors. Members of the Board will serve 4-year staggered terms beginning on October 1, 2009. The Board is authorized to exercise enumerated powers and duties to implement the act.

In order to obtain a license, applicants must submit an application form, pass an exam or present other evidence successful completion of professional training program; be covered by a fidelity bond; demonstrate good moral character; and pay the $25 application fee.

A licensee must at all times be covered by a fidelity bond or insurance policy in an amount of at least $20,000. Any insurance company issuing the bond must agree to give the Board 30 day's written notice before cancelling, modifying, or refusing to renew the bond, except in the case of nonpayment of premiums, in which case, 10 days notice must be given.

A licensee is subject to a number of requirements in connection with handling the money of a community association, including safeguarding and accounting for all funds, and promptly depositing funds in a federally insured bank account in a bank that consents to the jurisdiction of the Board for the examination of records necessary to enforce the act.

The Board is authorized to charge the following fees:

- Application for license $25.
- Examination fee $75.
- Issuance of license $150.
- License renewal $100.
- Late renewal $25.
- Course approval $150.
- Course approval renewal $75.
- Course fee per credit hour per licensee $5.
- Credit for unapproved course $50.
- Registration of association $50.

The Board is authorized to establish annual continuing education requirements not to exceed 8 credit hours. The Board may also require a course sponsor to pay a fee for each licensee completing a continuing education course offered by the sponsor. If a licensee seeks credit for an unapproved course, the Board may charge the licensee a fee for each unapproved course.

Each year, every community association with 20 or more owners must register with the Board and pay a $50 fee, regardless of whether the association retains a manager.

The Board may suspend or revoke a license or reprimand a licensee for any action listed as prohibited in the statute. The Board also has authority to issue and seek judicial enforcement of subpoenas in the course of an investigation. If the subpoena seeks the production of records of money belonging to community association or association member which is held by a financial institution, the Board must comply with the procedure for accessing records by subpoena set forth in the Financial Privacy Act.

A person who violates the act is guilty of a Class 2 misdemeanor.

Section 2 of the bill amends the provision of the Real Estate Brokers and Salespersons Licensing Act that relates to disciplinary actions taken by the Commission to clarify that a realtor who is also licensed as a community association manager shall not be disciplined for handling money in accordance with the Community Association Managers Act.

Section 3 provides that any person who has been engaged in business as a community association manager in this State for at least the prior three consecutive years may pay the required fee and be issued a license without meeting the requirements for licensure under this act. Any person who does not apply to the Board within one year after the effective date will be required to meet all of the licensing requirements.

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

S516-SMRO-142(CSROf-70) v1

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I feel a debt of gratitude to Senator Neal Hunt for using his position to help home owners fight against unfair treatment by some unscrupulous Homeowner Associations and managers. But I have to part ways with him and Representative Pryor Gibson on the proposed Community Manager Licensing Act as it only serves to put a stamp of approval on the exploitive business practices some community managers employ against inexperienced board members and home owners.

Just as the State Bar or the Real Estate Commission have not succeeded in eradicating unethical attorneys or Realtors who put their interests in ahead of their clients interests, the Community Manager Licensing Act will only put the state seal of approval on property managers. This new law will in no way change the dynamics of Homeowners Associations with inattentive boards or controlled by the developer but it will raise the cost of doing business for everyone. Only when the Planned Community Act is amended to enhance the rights of home owners will the playing field be leveled, until that time buyers must better educate themselves and participate in the physical and financial management of their associations.

Please do not support the Community Managers Licensing Act. It creates a governmental agency, a tax on the citizens of North Carolina, which does not solve the problem.

Principal Clerk ____
Reading Clerk ____

Corrected: Today's Senate Commerce meeting has been cancelled.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce** will not meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 21, 2009	11:00 AM	1027 LB

Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE
Thursday, July 23, 2009 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on July 23, 2009, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R.C. Soles presided.

S.B. 1004 – Amend Certain Electricity Generation Laws.

Senator Rand was recognized to explain the House Committee substitute for S.B. 1004. The bill provides for retention of fuel and fuel-related costs savings associated with the purchase or construction of a carbon offset facility, brings certain dams used in connection with electric generating facilities under the dam safety act, and makes other changes to the laws governing the generation of electricity. Steve Rose, a staff attorney with the Research Division, was recognized to answer questions. Senator Rand moved for concurrence and the motion carried. A copy of the bill is attached.

The meeting adjourned at 11:15 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 23, 2009

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

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #2) **1004** Amend Certain Electricity Generation Laws.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1004*

Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/8/09
House Committee Substitute #2 Favorable 7/20/09
Fifth Edition Engrossed 7/22/09

Short Title: Amend Certain Electricity Generation Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR RETENTION OF FUEL AND FUEL-RELATED COST SAVINGS ASSOCIATED WITH THE PURCHASE OR CONSTRUCTION OF A CARBON OFFSET FACILITY, TO BRING CERTAIN DAMS USED IN CONNECTION WITH ELECTRIC GENERATING FACILITIES UNDER THE DAM SAFETY ACT, AND TO MAKE OTHER CHANGES TO LAWS GOVERNING THE GENERATION OF ELECTRICITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The General Assembly makes the following findings:

(1) In 2002, North Carolina enacted S.L. 2002-4, the Clean Smokestacks Act, with the goal of improving air quality in the State.

(2) With the enactment of the Clean Smokestacks Act, North Carolina became a national leader in multipollutant air emissions reduction strategies and has experienced significant reductions in oxides of nitrogen (NOx) and sulfur dioxide (SO2), and, as a co-benefit, mercury.

(3) Duke Energy and Progress Energy, the investor-owned public utilities governed by the Clean Smokestacks Act, actively participated in the negotiations that led to the enactment of the Clean Smokestacks Act and recommended substantial emissions reductions requirements and an aggressive timeline for achieving compliance with those requirements.

(4) Both Duke Energy and Progress Energy have produced emissions reductions greater than and sooner than required by the Clean Smokestacks Act.

(5) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.

(6) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of carbon dioxide (CO2) and mercury (Hg) significantly more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.

(7) The retirement of coal-fired generating units that are owned and operated by Progress Energy and located in eastern North Carolina and the installation of

generating units that use natural gas as their primary fuel to replace them will reduce emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2), carbon dioxide (CO2), and mercury (Hg) more than would the installation of sulfur dioxide (SO2) emissions controls on the older coal-fired generating units.

SECTION 1.(b) G.S. 62-110.1 is amended by adding a new subsection to read:

"(h) Notwithstanding any other subsections of this section to the contrary, the Commission shall render its decision on an application for a certificate within 45 days of the date the application is filed if (i) the public utility that has applied for the certificate is subject to the provisions of subsection (e) of G.S. 143-215.107D; (ii) the application involves a request by the public utility to construct a generating unit that uses natural gas as the primary fuel at a specific coal-fired generating site that the public utility owns or operates on July 1, 2009; (iii) the coal-fired generating units at the site are not operated with flue gas desulfurization devices; (iv) the public utility will permanently cease operations of all of the coal-fired generating units at the site on or before the completion of the generating unit that is the subject of the certificate application; and (v) the installation of the generating unit that uses natural gas as the primary fuel allows the public utility to meet the requirements of subsection (e) of G.S. 143-215.107D. When the public utility applies for a certificate as provided in this subsection, it shall submit to the Commission and the Department of Environment and Natural Resources a revised verified statement required pursuant to subsection (i) of G.S. 62-133.6 and to the Commission an estimate of the costs of construction of the generating unit that uses natural gas as the primary fuel in such detail as the Commission may require. The provisions of G.S. 62-82 and subsection (e) of this section shall not apply to a certificate applied for pursuant to this subsection. The authority granted pursuant to this subsection expires January 1, 2011."

SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-133.10. Retention of fuel and fuel-related cost savings associated with the purchase or construction of a carbon offset facility.**

(a) The Commission shall permit an electric public utility that purchases or constructs a carbon offset facility to adjust its fuel and fuel-related costs in G.S. 62-133.2 to retain the North Carolina retail allocation of the system fuel and fuel-related cost savings resulting from the purchase or construction of the facility, not to exceed the annual revenue requirement associated with the allocated North Carolina retail portion of the facility as determined using the cost of service methodology approved by the Commission in the utility's last general rate case.

(b) For purposes of this section, "carbon offset facility" means a facility in this State that meets all of the following:

(1) The facility is purchased or constructed by an electric public utility between July 1, 2009, and July 1, 2014.

(2) The facility uses solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy to generate electricity or equivalent BTUs.

(3) The electricity or equivalent BTUs produced by the facility will displace electric generation so as to reduce greenhouse gas emissions from existing fossil fuel fired generating facilities used by the utility to meet the electricity needs of its North Carolina customers.

(c) An electric public utility seeking the adjustment authorized by this section first shall file with the Commission a petition requesting a determination that the facility the utility proposes to purchase or construct is a carbon offset facility. The utility shall include in its petition all of the following information in such form and detail as the Commission may require:

(1) Description and location of the facility.

(2) The benefit of the facility.
(3) A list of all necessary permitting and approvals and their status.
(4) Purchase or construction schedule, with in-service or completion date.
(5) Projected costs to purchase or construct and the annual revenue requirement for the facility.
(6) Projected annual generation output of the facility and information detailing how the generation projections were calculated.
(7) Information demonstrating that the operation of the facility will displace electric generation resulting in a reduction of greenhouse gas emissions from existing fossil fuel fired facilities used by the utility to meet the electricity needs of its North Carolina customers.
(8) The projected fuel and fuel-related cost savings the utility seeks to retain and how the savings were calculated.

(d) Upon the filing of the petition, the Public Staff shall conduct an investigation and shall file a report with the Commission setting forth the results of its investigation and stating whether the facility is a carbon offset facility. The Public Staff's report shall be filed not later than 45 days after the date the petition was filed, unless the Commission grants an extension of time not to exceed 15 days for good cause shown. Other interested persons may file comments in response to the utility's petition and the Public Staff's report not later than 15 days after the Public Staff files its report. The Commission shall enter an order either granting or denying the petition not later than 105 days after the date the petition was filed. A finding by the Commission that the facility is a carbon offset facility shall establish that the utility's decision to purchase or construct the facility is reasonable and prudent.

(e) Nothing in this section shall be construed to exempt an electric public utility from obtaining all applicable permits and certificates, including a certificate of public convenience and necessity required by G.S. 62-110.1. An electric public utility shall file annual cost and schedule updates with the Commission until the purchase or construction of an approved carbon offset facility is completed.

(f) Upon placement into service of an approved carbon offset facility, the electric public utility shall, in addition to the information and data provided under G.S. 62-133.2, submit the following in conjunction with its application for a fuel and fuel-related charge adjustment:

(1) A calculation of the annual revenue requirement associated with the carbon offset facility.
(2) Information demonstrating the specific items of costs associated with the carbon offset facility's annual revenue requirement are reasonable and prudent.
(3) The fuel and fuel-related cost savings resulting from operation of the carbon offset facility.
(4) Actual generation output of the carbon offset facility, including a demonstration and quantification of how this generation displaced electric generation resulting in reduced greenhouse gas emissions from existing fossil fuel fired facilities used by the utility to meet the electricity needs of its North Carolina customers during the test year.

(g) The Commission shall approve an estimate of the projected fuel and fuel-related cost savings and an annual revenue requirement for an approved facility, as appropriate, in each G.S. 62-133.2 proceeding. The Commission also may approve a true-up procedure for the projected fuel and fuel-related cost savings. In the first G.S. 62-133.2 proceeding conducted after the approved facility is placed in service, the Commission shall determine the reasonable and prudent cost of the facility for ratemaking purposes. The revenue requirement associated with the facility shall include but not be limited to: depreciation; operating and maintenance

costs; applicable taxes; and a return on investment, net of accumulated depreciation, accumulated deferred income taxes, and other applicable savings or adjustments. The rate of return on investment shall be based on the then current capital structure, embedded cost of preferred stock, and embedded cost of debt of the public utility net of appropriate income taxes, and the cost of common equity approved in the public utility's then most recent general rate case.

(h) The Commission shall authorize the electric public utility to utilize deferral accounting for the fuel and fuel-related cost savings realized in conjunction with the operation of an approved facility. The Commission shall, by rule or order, approve the terms and conditions of the deferral accounting.

(i) The annual revenue requirement of the approved facility in excess of the annual fuel and fuel-related cost savings shall be deemed recovered through the utility's then current base rates.

(j) The adjustment authorized by this section shall terminate upon the establishment of new rates in the electric public utility's next general rate case following the placement into service and inclusion into base rates of the approved facility."

SECTION 3.(a) G.S. 143-215.25A reads as rewritten:

"**§ 143-215.25A. Exempt dams.**

(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.~~under the jurisdiction of the North Carolina Utilities Commission, except that a dam operated by a small power producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of this Part even though the dam is constructed pursuant to a certificate of public convenience and necessity issues by the North Carolina Utilities Commission.~~

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than 15 feet in height or that has an impoundment capacity of less than 10 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(b) The exemption from this Part for a dam described in subdivisions (1) and (2) of subsection (a) of this section does not apply after the supervising federal agency relinquishes authority for the operation and maintenance of the dam to a local entity."

SECTION 3.(b) Any impoundments or other facilities that were in use on the effective date of this section in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to amendment by Section 3(a) of this act, shall be deemed to have received all of the necessary approvals from the Department of Environment

and Natural Resources and the Commission for Dam Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities.

SECTION 4. Section 3 of this act becomes effective January 1, 2010. The remainder of the act is effective when it becomes law.

Senate Commerce Committee
Tuesday, July 28, 2009
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met on Tuesday, July 28, 2009, at 11:00 a.m. in Room 1027 of the Legislative Building. Twenty six members of the Committee were present. Senator Soles recognized the following Pages assisting with the meeting: Michaela Barnes of Dunn and Kerry Johnson of Kipling, sponsored by Senator Blake; Danielle Rogers of Ayden, and Jonquelia Semies of Greenville, sponsored by Senator Davis; Karley Smith of Burlington, sponsored by Senator Foriest; Latosha Bell of Kernersville and Taylor Wallace of Winston-Salem, sponsored by Senator Garrou; Wilson Parker of Asheville, sponsored by Senator Nesbitt; Alex Yankoglu of Raleigh, sponsored by Senator Stein; and Deanna Metivier of Apex, sponsored by Senator Stevens.

Senator Soles stated that the first order of business would be to consider H.B. 1411, (Committee Substitute), Occ.Lic. Bd. Waiver Rules/Military Personnel, Representative Martin, the bill sponsor was recognized to explain the bill. Senator Apodaca in concurrence with Senator Stein, moved for a favorable report of the committee substitute bill. Motion carried.

The next order of business was S.B. 829, Regulation of Appraisal Management Companies, sponsored by Senator Jenkins. Senator Soles recognized Senator Jenkins who moved for adoption of the Committee Substitute bill for discussion purposes. After explaining the committee substitute bill, Senator Jenkins moved for a favorable report of the committee substitute bill with a re-referral to the Finance Committee. Motion carried.

Senator Soles recognized Senator Boseman for a motion to adopt the Senate Committee substitute bill for discussion purposes only for Committee Substitute No. 2 for H. B. 530, Utilities/Carrier of Last Resort, sponsored by Representative Carney, Representative Blue, and Representative Brubaker. After an unclear voice vote on the motion a division was called. The motion failed 5 to 11.

The next order of business was S.B. 849, Repeal Motor Vehicle Safety Inspections, sponsored by Senator Albertson who was recognized to explain the bill. Senator Soles recognized the John Turcotte, Director, and Carol Shaw, Principal Program Evaluator of the Program Evaluation Division to answer questions posed by the committee members. After numerous questions and comments by members and staff, Senator Soles recognized the following individuals who spoke in opposition to the bill: Thomas Caves, Special Assistant to the Secretary of Crime Control and Public Safety; Tracy Keel, North Carolina Division of Motor Vehicles; Harry Kaplan, representing AAA of the Carolinas; Robert Pulverento, Executive Director of the Independent Garage Owners; A. C. Guarino, of A.C. Auto Service Center in Winston-Salem; Reece Hester, representing the North Carolina Tire Dealers Association; and Steve Strickland, Manufacturers' Representative.

After a lengthy discussion period, Senator Soles opened the floor for a motion. No senator made a motion and Senator Soles withdrew the bill from further discussion.

Senator Soles recognized Steve Kouba, of Fayetteville, to address the committee regarding his experience as an intern during this legislative session.

The meeting adjourned at 11:50 a.m.

Senator R. C. Soles, Jr., Chairman

Joan Leatherman
Committee Clerk

Ramona Fitzgerald
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 28, 2009

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

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

S.B. **829** Regulation of Appraisal Management Companies.

Draft Number:	PCS35370
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, July 28, 2009

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

FAVORABLE

H.B.(CS #1) **1411** Occ. Lic. Bd. Waiver Rules/Military Personnel.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Apodaca – Floor Manager

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 28, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 530	Utilities/Carrier of Last Resort.	Representative Carney Representative Blue Representative Brubaker
SB 829	Regulation of Appraisal Management Companies.	Senator Jenkins
SB 849	Repeal Motor Vehicle Safety Inspections.	Senator Albertson

Senator R. C. Soles, Jr., Chair

Please Print
Legibly! (or else)

Pages Attending

DATE: 28 July '09

COMMITTEE: Commerce Room 1027 **TIME:** 11 AM

Sen. Soles

Page Name	Hometown	Sponsoring Senator
Wilson Parker	Asheville	M. Nesbitt
[redacted] Kayley Smith	Burlington	Forest
Danielle Rogers	Ayden	Davis
Jonquella Semies	Greenville	Davis
Taylor Wallace	Winston Salem	Garrou
LaTosha Bell	Kernersville	Garrou
Alex Yankoglu	Raleigh	Stein
Michaela Barnes	Dunn	Blake
Deanna Metzler	Apex	Stevens
Kerry Johnson	Kipling	Blake

Senate Commerce Committee
Tuesday, July 28, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 530	Utilities/Carrier of Last Resort.	Rep. Carney Rep. Blue Rep. Brubaker
HB 1411	Occ. Lic. Bd. Waiver Rules/Military Personnel.	Rep. Martin
SB 829	Regulation of Appraisal Management Companies.	Sen. Jenkins
SB 849	Repeal Motor Vehicle Safety Inspections.	Sen. Albertson

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1411
Committee Substitute Favorable 7/8/09

Short Title: Occ. Lic. Bd. Waiver Rules/Military Personnel. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT OCCUPATIONAL LICENSING BOARDS TO ADOPT RULES TO POSTPONE OR WAIVE CONDITIONS OF LICENSURE FOR CERTAIN INDIVIDUALS SERVING IN THE ARMED FORCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-15 reads as rewritten:

"**§ 93B-15. Payment of license fees by members of the armed forces; board waiver rules.**

(a) An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

(b) Occupational licensing boards shall adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return."

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

HOUSE BILL 1411:
Occ. Lic. Bd. Waiver Rules/Military Personnel

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 28, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1411 would require occupational licensing boards to adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to occupational licensure for individuals serving in the armed forces who have been granted an extension of time to file a tax return.

CURRENT LAW: An individual who is serving in the armed forces of the United States and who has been granted an extension of time to file a tax return under G.S. 105-249.2, is also granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

G.S. 105-249.2 provides that the Secretary of Revenue may not assess a penalty or interest against a taxpayer during any period that federal tax deadlines are postponed under the Code because of the taxpayer's service in a combat zone or the taxpayer's hospitalization because of injuries received while serving in a combat zone. The taxpayer is also granted an extension of time to file a return or take another action concerning a State tax during this period.

BILL ANALYSIS: House Bill 1411 would amend Chapter 93B of the General Statutes governing occupational licensing boards to require occupational licensing boards to adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual in instances where the individual meets all of the following criteria:

- Is currently licensed and in good standing with the board.
- Is serving in the armed forces of the United States.
- Would be granted an extension of time to file a tax return under G.S. 105-249.2.

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

Ben Popkin and Martha Walston contributed to this summary.

H1411-SMSU-146(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 829*
PROPOSED COMMITTEE SUBSTITUTE S829-CSROf-78 [v.1]

7/27/2009 4:19:31 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, 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:

(i) Directly or indirectly engage or attempt to engage in business as an appraisal management company.

(ii) Advertise or make a representation that the person or entity is engaging in or conducting business as an appraisal management company.

(iii) 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 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 Appraiser 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 (USPAP) 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 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 they have 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) a month 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 (USPAP) 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. 114-19.26. 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 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 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 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:

"**§ 114-19.26. 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 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 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 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:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	July 27, 2009
Introduced by:	Sen. Jenkins	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S829-CSROf-78		

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, 2012, 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:

- Administers a network of independent contractor appraisers;
- Receives requests for appraisals from clients;
- Is paid a fee by the client for the appraisal; and
- Enters into an agreement with one or more appraisers in its network to perform the requested appraisal.

The definition does not include any government agency, any chartered financial institution, a real estate broker performing market analyses, or appraisal businesses that employ appraisers or that occasionally contract with independent appraisers because of the location or type of property.

The Appraisal Board is authorized 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 it will only contract with North Carolina licensed appraisers in good standing.

Each appraisal management company must designate a compliance manager who must be a certified general real estate appraiser under the laws of North Carolina or the comparable laws of another state. Failure to comply with this provision results in registration suspension.

The Appraisal Board is authorized to charge the following fees:

- Application fee $5,000.
- Renewal fee $2,500.
- 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, 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 provides that a real estate appraisal management company established under federal law is not required to pay the initial fee required in this Act, but must pay subsequent registration renewal fees.

EFFECTIVE DATE: This act becomes effective January 1, 2012.

S829-SMRO-151(CSROf-78) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 530
Committee Substitute Favorable 4/1/09
Committee Substitute #2 Favorable 4/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H530-CSRI-47 [v.1]

7/22/2009 2:54:20 PM

Short Title: Cement Plant Moratorium/Studies. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION AND OPERATION OF CEMENT PLANTS IN THE STATE UNTIL SEPTEMBER 1, 2010, AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE ENVIRONMENTAL IMPACTS OF CEMENT PLANTS AND THE SITING, DESIGN, AND OPERATIONAL REQUIREMENTS GOVERNING CEMENT PLANTS IN ORDER TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT.

Whereas, it is declared to be the public policy of this State to provide for the conservation of its water and air resources; and

Whereas, it is the intent of the General Assembly to achieve and maintain a total environment of superior quality for the citizens of the State; and

Whereas, recognizing that the water and air resources of the State belong to the people, the General Assembly has affirmed the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and has declared the prudent utilization of these resources to be essential to the general welfare; and

Whereas, cement plants emit pollutants injurious to the environment and human health such as sulfur dioxide, nitrogen oxide, volatile organics, particulate matter, and hazardous air pollutants including dioxins, furans, and mercury; and

Whereas, mercury, which is generated from the raw materials and some fuels used in cement-making, is a toxic metal that can damage the brain and nervous system; and

Whereas, mercury emissions are converted to the highly toxic form of methylmercury in surface waters; and

Whereas, mercury bioaccumulates in fish, which makes siting of facilities with high mercury emissions near public water bodies and in coastal areas of particular concern; and

Whereas, consumption advisories for 17 species of ocean fish and eight species of freshwater fish have been issued for sensitive populations such as pregnant and nursing women and children under the age of 15, based on the high level of mercury these fish contain and the potential damaging health effects that may be suffered by these sensitive populations from exposure to high levels of mercury; and

Whereas, section 303(d) of the federal Clean Water Act (CWA) requires states to develop a list of waters not meeting water quality standards or that have impaired uses, which waters must be prioritized, and a management strategy or total maximum daily load (TMDL) must subsequently be developed for all listed waters; and at least 49 segments of water bodies in the State (assessment units) are included on the State's 303(d) list of impaired waters as a result of fish advisories due to mercury; and

Whereas, in 2007 the United States Environmental Protection Agency (USEPA) initiated a process to collect data from cement kiln companies pertaining to mercury content of all kiln inputs and the results of any mercury tests that had been performed on cement kilns at these facilities at any time. USEPA asserted that it would take until mid-September 2008 to analyze the data, determine the floor levels for emissions limitations, determine whether to propose more stringent beyond-the-floor emission limitations, and issue a proposed rule for public comment; and

Whereas, in January 2009 the USEPA noticed a proposed settlement agreement between the USEPA, several environmental groups, the Portland Cement Association, and the States of New York, Connecticut, Illinois, Maryland, Michigan, New Jersey, and the Commonwealths of Massachusetts and Pennsylvania wherein USEPA agreed to take action to establish new mercury emissions limitations from new and existing Portland cement kilns, with a notice taking final administrative action concerning the proposed rule making to be signed by the USEPA Administrator no later than March 31, 2010; and

Whereas, adequate data on mercury emissions from cement plants and conclusion of USEPA's final administrative action to establish new emissions limitations for these facilities are essential to an informed consideration of issues concerning the proper siting, design, and operation of cement plants in the State; and

Whereas, improperly sited, designed, or operated cement plants have the potential to cause serious environmental damage, including air and surface water contamination, and threaten human health; and

Whereas, it is essential that the State study the siting, design, and operational requirements for cement plants near schools and other places where children regularly congregate as children are thought to be more vulnerable to environmental exposures than adults given that their bodily systems are still developing, and for other reasons; and

Whereas, it is essential that the State study the siting, design, and operational requirements for cement plants in environmentally sensitive areas with nearby waterbodies in order to protect public health and the environment; and

Whereas, it is essential for the protection of public health and the environment to conduct an environmental review of the primary, secondary, and cumulative impacts of cement plants to ensure both air and water quality issues are considered together prior to the issuance of any permits; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Moratorium Established. – There is hereby established a moratorium on consideration of applications for permits and on the issuance of permits for cement plants for construction and operation in the State. The purpose of this moratorium is to allow the State to study the environmental impacts of cement plants in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a cement plant for the period beginning on the date this act becomes law until September 1, 2010.

SECTION 2.(a) Study. – The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study issues related to cement plants. In conducting this study, the Commission shall consider the findings of any environmental impact statements conducted pursuant to the State Environmental Policy Act

and the National Environmental Policy Act for cement plants proposed to be sited in the State. The Commission shall specifically study issues concerning:

(1) Impacts of mercury and all other pollutants emitted from cement plants on public health in nearby communities, with particular attention to the potential impacts on children's health in schools located in close proximity to cement plants.

(2) Impacts of accumulations of mercury and other dangerous chemicals in surface waters and aquatic life, and atmospheric deposition of air pollutants upon surface waters and land.

(3) Impacts of cement plants on regional groundwater and drinking water supplies, including the potential for saltwater intrusion into coastal aquifers.

(4) Impacts of cement facility operations on nearby communities, including, but not limited to: (i) impacts on local and regional traffic patterns and infrastructure; and (ii) cumulative impacts of cement plants and other heavy industry to regional tourism, commercial and residential development, and recreational activities such as hunting and fishing.

(5) Siting, design, and operational requirements for cement plants that are proposed for construction and operation in close proximity to schools, communities, public lands and waters, and other environmentally sensitive areas.

(6) The advisability of requiring the Department to: (i) conduct a study, which meets all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4, of the environmental impacts of all proposed cement plants; and (ii) consider the study of environmental impacts and any mitigation measures proposed by an applicant in deciding whether to issue or deny a permit for a cement plant.

SECTION 2.(b) Subcommittee. – In order to facilitate the conduct of this study, the cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of cement plants, such as air toxics, atmospheric deposition of airborne pollutants, land conservation, public health, and hydrology, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 2.(c) Report. – The Commission shall report its findings, together with any recommended legislation, to the 2010 Regular Session of the General Assembly upon its convening.

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

HOUSE BILL 530:
Utilities/Carrier of Last Resort

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 27, 2009
Introduced by:	Reps. Blue, Carney, Brubaker	**Prepared by:**	Jennifer McGinnis
Analysis of:	Third Edition		Tim Hovis
			Staff Attorneys

SUMMARY: ***The Proposed Committee Substitute for House Bill 530 would establish a moratorium on consideration of applications for permits and on the issuance of permits for cement plants for construction and operation in the State. The Department of Environment and Natural Resources (DENR) would be prohibited from considering a permit application and issuing a permit for a cement plant for the period beginning on the date this bill would become law until September 1, 2010.***

BILL ANALYSIS: The bill would establish a moratorium on consideration of applications for permits and on the issuance of permits for cement plants for construction and operation in the State. DENR would be prohibited from considering a permit application and issuing a permit for a cement plant for the period beginning on the date this act becomes law until September 1, 2010. The purpose of the moratorium would be to allow the State to study the environmental impacts of cement plants. The bill would direct the Environmental Review Commission (ERC), with the assistance of DENR, to study issues concerning:

- Impacts of mercury and all other pollutants emitted from cement plants on public health in nearby communities, with particular attention to the potential impacts on children's health in schools located in close proximity to cement plants.
- Impacts of accumulations of mercury and other dangerous chemicals in surface waters and aquatic life, and atmospheric deposition of air pollutants upon surface waters and land.
- Impacts of cement plants on regional groundwater and drinking water supplies, including the potential for saltwater intrusion into coastal aquifers.
- Impacts of cement facility operations on nearby communities, including, but not limited to: (i) impacts on local and regional traffic patterns and infrastructure; and (ii) cumulative impacts of cement plants and other heavy industry to regional tourism, commercial and residential development, and recreational activities such as hunting and fishing.
- Siting, design, and operational requirements for cement plants that are proposed for construction and operation in close proximity to schools, communities, public lands and waters, and other environmentally sensitive areas.
- The advisability of requiring the Department to: (i) conduct a study, which meets all of the requirements set forth under the State Environmental Protection Act (SEPA) and rules adopted pursuant to SEPA, of the environmental impacts of all proposed cement plants; and (ii) consider the study of environmental impacts and any mitigation measures proposed by an applicant in deciding whether to issue or deny a permit for a cement plant.

BACKGROUND: In 2007 the United States Environmental Protection Agency (USEPA) initiated a process to collect data from cement kiln companies pertaining to mercury content of all kiln inputs and the results of any mercury tests that had been performed on cement kilns at these facilities at any time. USEPA asserted that it would take until mid-September 2008 to analyze the data, determine the floor

levels for emissions limitations, determine whether to propose more stringent beyond-the-floor emission limitations, and issue a proposed rule for public comment.

In January 2009 the USEPA noticed a proposed settlement agreement between the USEPA, several environmental groups, the Portland Cement Association, and the States of New York, Connecticut, Illinois, Maryland, Michigan, New Jersey, and the Commonwealths of Massachusetts and Pennsylvania wherein USEPA agreed to take action to establish new mercury emissions limitations from new and existing cement plants, with a notice taking final administrative action concerning the proposed rule making to be signed by the USEPA Administrator no later than March 31, 2010.

There are no cement plants currently operating in the State. A permit application is pending for a cement plant proposed to be located in New Hanover County.

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

H530-SMRG-99(e3) v1

SENATE BILL 849*

Short Title:	Repeal Motor Vehicle Safety Inspections.	(Public)
Sponsors:	Senators Albertson, Clodfelter, Hartsell; and Boseman.	
Referred to:	Commerce.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT MOTOR VEHICLES REGISTERED IN THIS STATE HAVE AN ANNUAL SAFETY INSPECTION, TO ELIMINATE THE REQUIREMENT THAT WINDOW TINTING BE INSPECTED AT AN INSPECTION STATION BY A LICENSED SAFETY INSPECTOR, TO ELIMINATE THE AFFIRMATIVE DEFENSE TO AN UNSAFE TIRES CHARGE, TO ELIMINATE THE REQUIREMENT THAT A VEHICLE BE SUBJECT TO A SAFETY INSPECTION BEFORE A CHARGE FOR TINTED WINDOWS MAY BE MADE, TO DEVELOP AND IMPLEMENT A MANAGEMENT IMPROVEMENT PLAN FOR THE MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM, ADMINISTERED BY THE DIVISION OF MOTOR VEHICLES, WHICH WILL INCREASE EFFICIENCY, REDUCE COSTS, AND IMPROVE CUSTOMER SERVICE, AND TO REQUIRE THE FISCAL RESEARCH DIVISION OF THE GENERAL ASSEMBLY TO CONDUCT A FISCAL REVIEW OF THE DIVISION OF MOTOR VEHICLES EMISSIONS INSPECTION PROGRAM, AS RECOMMENDED BY THE PROGRAM EVALUATION DIVISION OF THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3A of Chapter 20 of the General Statutes reads as rewritten:

"Article 3A.

"~~Safety and~~ Emissions Inspection Program.

"Part 1. Safe Use of Streets and Highways.

"**§ 20-183.1: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 3.**

"Part 2. ~~Safety and~~ Emissions Inspections of Certain Vehicles.

"**§ 20-183.2. Description of vehicles subject to ~~safety or~~ emissions inspection; definitions.**

~~(a) Safety. A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:~~

~~(1) It is subject to registration with the Division under Article 3 of this Chapter.~~

~~(2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.~~

~~(3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.~~

~~(a1) Safety Inspection Exceptions. The following vehicles shall not be subject to a safety inspection pursuant to this Article:~~

~~(1) Historic vehicles, as defined in G.S. 20-79.4(b)(55).~~

~~(2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248(a).~~

(b) ~~Emissions.~~Emissions Inspections. – A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

(1) It is subject to registration with the Division under Article 3 of this Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection.

(2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.

(3) It is a 1996 or later model.

(4) Repealed by Session Laws 1999-328, s. 3.11, effective July 21, 1999.

(5) It meets any of the following descriptions:

a. It is required to be registered in an emissions county.

b. It is part of a fleet that is operated primarily in an emissions county.

c. It is offered for rent in an emissions county.

d. It is a used vehicle offered for sale by a dealer in an emissions county.

e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.

f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.

(6) It is not licensed at the farmer rate under G.S. 20-88(b).

(7) It is not a new motor vehicle, as defined in G.S. 20-286(10)a. and has been a used motor vehicle, as defined in G.S. 20-286(10)b., for 12 months or more. However, a motor vehicle that has been leased or rented, or offered for lease or rent, is subject to an emissions inspection when it either:

a. Has been leased or rented, or offered for lease or rent, for 12 months or more.

b. Is sold to a consumer-purchaser.

(8) It is not a privately owned, nonfleet motor home or house car, as defined in G.S. 20-4.01(27)d2., that is built on a single chassis, has a gross vehicle weight of more than 10,000 pounds, and is designed primarily for recreational use.

(c) Definitions. – The following definitions apply in this Part:

(1) Electronic inspection authorization. – An inspection authorization that is generated electronically through the electronic accounting system that creates a unique nonduplicating authorization number assigned to the vehicle's inspection receipt upon successful passage of an inspection. The term "electronic inspection authorization" shall include the term "inspection sticker" during the transition period to use of electronic inspection authorizations.

(2) Emissions county. – A county listed in G.S. 143-215.107A(c) or designated by the Environmental Management Commission pursuant to G.S. 143-215.107A(d) and certified to the Commissioner of Motor Vehicles as a county in which the implementation of a motor vehicle emissions inspection program will improve ambient air quality.

(3) Federal installation. – An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency.

"§ 20-183.3. Scope of ~~safety inspection and~~an emissions inspection.

~~(a) Safety. – A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:~~

~~(1) Brakes, as required by G.S. 20-124.~~

~~(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.~~

~~(3) Horn, as required by G.S. 20-125(a).~~

~~(4) Steering mechanism, as required by G.S. 20-123.1.~~

~~(5) Windows and windshield wipers, as required by G.S. 20-127. To determine if a vehicle window meets the window tinting restrictions, a safety inspection mechanic must first determine, based on use of an automotive film check card or knowledge of window tinting techniques, if after factory tint has been applied to the window. If after factory tint has been applied, the mechanic must use a light meter approved by the Commissioner to determine if the window meets the window tinting restrictions.~~

~~(6) Directional signals, as required by G.S. 20-125.1.~~

~~(7) Tires, as required by G.S. 20-122.1.~~

~~(8) Mirrors, as required by G.S. 20-126.~~

~~(9) Exhaust system and emissions control devices, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emissions control devices is included in the emissions inspection rather than the safety inspection.~~

(b) Repealed by Laws 2000-134, s. 12, effective January 1, 2006.

(b1) Emissions. – An emissions inspection of a motor vehicle consists of a visual inspection of the vehicle's emissions control devices to determine if the devices are present, are properly connected, and are the correct type for the vehicle and an analysis of data provided by the on-board diagnostic (OBD) equipment installed by the vehicle manufacturer to identify any deterioration or malfunction in the operation of the vehicle that violates standards for the model year of the vehicle set by the Environmental Management Commission. To pass an emissions inspection a vehicle must pass both the visual inspection and the OBD analysis. ~~When an emissions inspection is performed on a vehicle, a safety inspection must be performed on the vehicle as well.~~

(c) Reinspection After Failure. – The scope of a reinspection of a vehicle that has been repaired after failing an inspection is the same as the original inspection unless the vehicle is presented for reinspection within 60 days of failing the original inspection. ~~If the vehicle is presented for reinspection within this time limit and the inspection the vehicle failed was a safety inspection, the reinspection is limited to an inspection of the equipment that failed the original inspection.~~ If the vehicle is presented for reinspection within this time ~~limit and the inspection the vehicle failed was an emissions inspection,~~ limit, the reinspection is limited to the portion of the inspection the vehicle failed and any other portion of the inspection that would be affected by repairs made to correct the failure.

~~§ 20-183.4. License required to perform safety inspection; qualifications for license.~~

~~(a) License Required. – A safety inspection must be performed by one of the following methods:~~

~~(1) At a station that has a safety inspection station license issued by the Division and by a mechanic who is employed by the station and has a safety inspection mechanic license issued by the Division.~~

~~(2) At a place of business of a person who has a safety self-inspector license issued by the Division and by an individual who has a safety inspection mechanic license issued by the Division.~~

~~(b) Station Qualifications. – An applicant for a license as a safety inspection station must meet all of the following requirements:~~

~~(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection. A place of business designated in a station license that has been suspended or revoked cannot be the designated place for any other license applicant during the period of the suspension or revocation, unless the Division finds that operation of the place of business as an inspection station during this period by the license applicant would not defeat the purpose of the suspension or revocation because the license applicant has no connection with the person whose license was suspended or revoked or because of another reason. A finding made by the Division under this subdivision must be set out in a written statement that includes the finding and the reason for the finding.~~

~~(2) Regularly employ at least one mechanic who has a safety inspection mechanic license.~~

~~(3) Designate the individual who will be responsible for the day-to-day operation of the station. The individual designated must be of good character and have a reputation for honesty.~~

~~(4) Have equipment and software approved by the Division to transfer information on safety inspections to the Division by electronic means. During the initial implementation of the electronic inspection process, the vendor selected by the Division shall provide the equipment and software at no cost to a station that holds a license on October 1, 2008.~~

~~(c) Mechanic Qualifications. An applicant for a license as a safety inspection mechanic must meet all of the following requirements:~~

~~(1) Have successfully completed an eight-hour course approved by the Division that teaches students about the safety equipment a motor vehicle is required to have to pass a safety inspection and how to conduct a safety inspection using equipment to electronically transmit the vehicle information and inspection results.~~

~~(2) Have a drivers license.~~

~~(3) Be of good character and have a reputation for honesty.~~

~~(d) Self-Inspector Qualifications. An applicant for a license as a safety self-inspector must meet all of the following requirements:~~

~~(1) Operate a fleet of at least 10 vehicles that are subject to a safety inspection.~~

~~(2) Regularly employ or contract with an individual who has a safety inspection mechanic license and who will perform a safety inspection on the vehicles that are part of the self-inspector's fleet.~~

"§ 20-183.4A. License required to perform emissions inspection; qualifications for license.

(a) License Required. – An emissions inspection must be performed by one of the following methods:

(1) At a station that has an emissions inspection station license issued by the Division and by a mechanic who is employed by the station and has an emissions inspection mechanic license issued by the Division.

(2) At a place of business of a person who has an emissions self-inspector license issued by the Division and by an individual who has an emissions inspection mechanic license.

(b) Station Qualifications. – An applicant for a license as an emissions inspection station must meet all of the following requirements:

~~(1) Have a license as a safety inspection station.~~

(2) Repealed by Session Law 2000-134, s. 15, effective January 1, 2006.

(2a) Have equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission.

(3) Have equipment and software to transfer information on emissions inspections to the Division by electronic means. During the initial implementation of the electronic inspection process, the vendor selected by the Division shall provide the software at no cost to a station that holds a license on October 1, 2008.

(4) Regularly employ at least one mechanic who has an emissions inspection mechanic license.

(c) Mechanic Qualifications. – An applicant for a license as an emissions inspection mechanic must meet all of the following requirements:

~~(1) Have a license as a safety inspection mechanic.~~

(2) Repealed by Session Law 2000-134, s. 15, effective January 1, 2006.

(2a) Have successfully completed an eight-hour course approved by the Division that teaches students about the causes and effects of the air pollution problem, the purpose of the emissions inspection program, the vehicle emission standards established by the United States Environmental Protection Agency, the emission control devices on vehicles, how to conduct an emissions inspection using equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission, and any other topic required by 40 C.F.R. § 51.367 to be included in the course. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

(d) Self-Inspector Qualifications. – An applicant for a license as an emissions self-inspector must meet all of the following requirements:

~~(1) Have a license as a safety self-inspector.~~

(2) Operate a fleet of at least 10 vehicles that are subject to an emissions inspection.

(3) Repealed by Session Law 2000-134, s. 15, effective January 1, 2006.

(3a) Have, or have a contract with a person who has, equipment to analyze data provided by the on-board diagnostic (OBD) equipment approved by the Environmental Management Commission.

(4) Regularly employ or contract with an individual who has an emissions inspection mechanic license and who will perform an emissions inspection on the vehicles that are part of the self-inspector's fleet.

"§ 20-183.4B. Application for license; duration of license; renewal of mechanic license.

(a) Application. – An applicant for a license issued under this Part must complete an application form provided by the Division. The application must contain the applicant's name and address and any other information needed by the Division to determine whether the applicant is qualified for the license. The Division must review an application for a license to determine if the applicant qualifies for the license. If the applicant meets the qualifications, the Division must issue the license. If the applicant does not meet the qualifications, the Division must deny the application and notify the applicant in writing of the reason for the denial.

(b) Duration of License. – ~~A safety inspection mechanic license expires four years after the date it is issued.~~ An emissions mechanic inspection license expires two years after the date it is issued. ~~A safety inspection station license, an~~An emissions inspection station ~~license,~~license and a self-inspector license are effective until surrendered by the license holder or suspended or revoked by the Division.

(c) Renewal of Mechanic License. – ~~A safety or an~~An emissions inspection mechanic may apply to renew a license by filing an application with the Division on a form provided by

the Division. To renew an emissions inspection mechanic license, an applicant must have successfully completed a four-hour emissions refresher course approved by the Division within nine months of applying for renewal. Successful completion requires a passing score on a written test and on a hands-on test in which the student is required to conduct an emissions inspection of a motor vehicle.

"§ 20-183.4C. When a vehicle must be inspected; three-day trip permit.

(a) Inspection. – A vehicle that is subject to ~~a safety inspection, an~~ emissions ~~inspection, or both~~inspection must be inspected as follows:

(1) A new vehicle must be inspected before it is sold at retail in this State. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(1a) A new motor vehicle dealer who is also licensed pursuant to this Article may, notwithstanding subdivision (1) of this section, examine the ~~safety and~~ emissions control devices on a new motor vehicle and perform such services necessary to ensure the motor vehicle conforms to the required specifications established by the manufacturer and contained in its predelivery check list. The completion of the predelivery inspection procedure required or recommended by the manufacturer on a new motor vehicle shall constitute the inspection required by subdivision (1) of this section. For the purposes of this subdivision, the date of inspection shall be deemed to be the date of the sale of the motor vehicle to a purchaser.

(2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.

(3) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(4) A new or used vehicle acquired by a resident of this State from outside the State must be inspected before the vehicle is registered with the Division.

(5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected before the vehicle is registered with the Division.

(5a) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.

(6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the registration on the vehicle expires.

(7) A vehicle that is required to be inspected in accordance with this Part may be inspected 90 days prior to midnight of the last day of the month as designated by the vehicle registration sticker.

(8) A new or used vehicle acquired from a retailer in this State and registered with the Division with a new registration or a transferred registration must be inspected in accordance with this Part when the current registration expires.

(9) A used vehicle acquired from a private sale in this State must be inspected in accordance with this Part before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(10) An unregistered vehicle must be inspected before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.

(11) A person who owns a vehicle located outside of this State when its emissions inspection becomes due may obtain an emissions inspection in the jurisdiction where the vehicle is located, in lieu of a North Carolina

emissions inspection, as long as the inspection meets the requirements of 40 C.F.R. § 51.

(b) Permit. – The Division may issue a three-day trip permit to a person that authorizes the person to drive an insured vehicle whose inspection authorization or registration has expired. The permit must describe the vehicle whose inspection authorization or registration has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station, repair shop, or Division or contract agent registration office.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass the emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection.

"§ 20-183.4D. Procedure when a vehicle is inspected.

(a) Receipt. – When ~~a safety inspection mechanic or~~ an emissions inspection mechanic inspects a vehicle, the mechanic must give the person who brought the vehicle in for inspection an inspection receipt. The inspection receipt must state the date of the inspection, identify the mechanic performing the inspection, identify the station or self-inspector where the inspection was performed, and list the components of the inspection performed and indicate for each component whether the vehicle passed or failed. A vehicle that fails a component of an inspection may be repaired at any repair facility chosen by the owner or operator of the vehicle.

(b) Electronic Inspection Authorization. – ~~When a vehicle that is subject to a safety inspection only passes the safety inspection, the safety inspection mechanic who performed the inspection must issue an electronic inspection authorization to the vehicle at the place designated by the Division.~~ When a vehicle that is subject to ~~both a safety inspection and~~ an emissions inspection passes ~~both inspections or passes the safety~~ inspection ~~and~~ or has a waiver for the emissions inspection, the emissions mechanic performing the inspection must issue an electronic inspection authorization to the vehicle at the place designated by the Division.

(c), (d) Repealed by Session Law 2007-503, s. 6, effective October 1, 2008.

(e) When Electronic Inspection Authorization Expires. – An electronic inspection authorization issued under this Part expires at midnight of the last day of the month designated by the vehicle registration sticker of the following year.

"§ 20-183.5. When a vehicle that fails an emissions inspection may obtain a waiver from the inspection requirement.

(a) Requirements. – The Division may issue a waiver for a vehicle, excluding a vehicle owned or being held for retail sale by a motor vehicle dealer, that meets all of the following requirements:

(1) Fails an emissions inspection because it passes the visual inspection but fails the analysis of data provided by the on-board diagnostic (OBD) equipment.

(2) Has documented repairs costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is two hundred dollars ($200.00).

(3) Is reinspected and again fails the inspection because it passes the visual inspection but fails the analysis of data provided by the on-board diagnostic (OBD) equipment.

(4) Meets any other waiver criteria required by 40 C.F.R. § 51.360, or as designated by the Division.

(b) Procedure. – To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it

determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an electronic inspection authorization.

(c) Repairs. – The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:

(1) Repairs covered by a warranty that applies to the vehicle.

(2) Repairs needed as a result of tampering with an emission control device of the vehicle.

(3) Repairs made by an individual who is not professionally engaged in the business of repairing vehicles.

(4) OBD diagnostics without corresponding repairs.

(d) Electronic Inspection Authorization. – An electronic inspection authorization issued to a vehicle after the vehicle receives a waiver from the requirement of passing the emissions inspection expires at the same time it would if the vehicle had passed the emissions inspection.

~~**§ 20-183.5A. When a vehicle that fails a safety inspection because of missing emissions control devices may obtain a waiver.**~~

~~(a) Requirements. The Division may issue a waiver for a vehicle that meets all of the following requirements:~~

~~(1) Fails a safety inspection because it does not have one or more emissions control devices.~~

~~(2) Has documented repairs within the previous calendar year to replace missing emissions control devices costing at least the waiver amount made to the vehicle to correct the cause of the failure. The waiver amount is two hundred dollars ($200.00) if the vehicle is a 1996 or newer model.~~

~~(b) Procedure. To obtain a waiver, a person must contact a local enforcement office of the Division. Before issuing a waiver, an employee of the Division must review the inspection receipts issued for the inspections of the vehicle, review the documents establishing what repairs were made to the vehicle and at what cost, review any statement denying warranty coverage of the repairs made, and do a visual inspection of the vehicle, if appropriate, to determine if the documented repairs were made. The Division must issue a waiver if it determines that the vehicle qualifies for a waiver. A person to whom a waiver is issued must present the waiver to the self-inspector or inspection station performing the inspection to obtain an electronic inspection authorization.~~

~~(c) Repairs. The following repairs and their costs cannot be considered in determining whether the cost of repairs made to a vehicle equals or exceeds the waiver amount:~~

~~(1) Repairs covered by a warranty that applies to the vehicle.~~

~~(2) Repairs needed as a result of tampering with an emission control device of the vehicle.~~

~~(3) Repairs made by an individual who is not professionally engaged in the business of repairing vehicles.~~

~~(d) Electronic Inspection Authorization Expiration. An electronic inspection authorization issued to a vehicle after the vehicle receives a waiver from the requirement of passing the safety inspection expires at the same time it would if the vehicle had passed the safety inspection.~~

"§ 20-183.6: Repealed by Session Laws 2007-503, s. 10, effective October 1, 2008, and applicable to offenses committed on or after that date.

"§ 20-183.6A. Administration of program; duties of license holders.

(a) Division. – The Division is responsible for administering the ~~safety inspection and the~~ emissions inspection ~~programs.~~program. In exercising this responsibility, the Division must:

(1) Conduct performance audits, record audits, and equipment audits of those licensed to perform inspections to ensure that inspections are performed properly.

(2) Ensure that Division personnel who audit license holders are knowledgeable about audit procedures and about the requirements of ~~both the safety inspection and~~ the emissions inspection ~~programs.~~program.

(3) Perform an emissions inspection on a vehicle when requested to do so by a vehicle owner so the owner can compare the result of the inspection performed by the Division with the result of an inspection performed at an emissions inspection station.

(4) Investigate complaints about a person licensed to perform inspections and reports of irregularities in performing inspections.

(5) Establish written procedures for the issuance of electronic inspection authorizations to persons licensed to perform electronic inspection authorizations.

(6) Submit information and reports to the federal Environmental Protection Agency as required by 40 C.F.R. Part 51.

(b) License Holders. – A person who is licensed by the Division under this Part must post the license at the place required by the Division and must keep a record of inspections performed. The inspection record must identify the vehicle that was inspected, indicate the type of inspection performed and the date of inspection, and contain any other information required by the Division. A self-inspector or an inspection station must send its records of inspections to the Division in the form and at the time required by the Division. An auditor of the Division may review the inspection records of a person licensed by the Division under this Part during normal business hours.

"**§ 20-183.7. Fees for performing an inspection and issuing an electronic inspection authorization to a vehicle; use of civil penalties.**

(a) Fee Amount. – When a fee applies to an inspection of a vehicle or the issuance of an electronic inspection authorization, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an electronic inspection authorization:

Type	Inspection	Authorization
~~Safety Only~~	~~$ 12.75~~	~~$0.85~~
Emissions ~~and Safety~~	~~23.50~~$11.00	~~6.50.~~$5.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an electronic inspection authorization applies when an electronic inspection authorization is issued to a vehicle. ~~The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6.~~ The fee for inspecting after-factory tinted windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a ~~safety inspection~~certified mechanic determined that the window had after-factory tint. A ~~safety inspection~~certified mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 60 days of the failed inspection without paying another inspection fee.

The inspection fee for an emissions ~~and safety~~ inspection set out in this subsection is the maximum amount that an inspection station or an inspection mechanic may charge for an emissions ~~and safety~~ inspection of a vehicle. An inspection station or an inspection mechanic may charge the maximum amount or any lesser amount for an emissions ~~and safety~~ inspection of a vehicle. ~~The inspection fee for a safety only inspection set out in this subsection may not~~

~~be increased or decreased.~~ The authorization fees set out in this subsection may not be increased or decreased.

(b) Self-Inspector. – The fee for an inspection does not apply to an inspection performed by a self-inspector. The fee for issuing an electronic inspection authorization to a vehicle applies to an inspection performed by a self-inspector.

(c) Fee Distribution. – Fees collected for electronic inspection authorizations are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Telecommunications Account established in subsection (d1) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Air Quality of the Department of Environment and Natural Resources:

Recipient	~~Safety Only Electronic Authorization~~	Emissions ~~and Safety~~ Electronic Authorization
~~Highway Fund~~	~~.55~~	~~.55~~
Emissions Program Account	~~.00~~	3.00
Telecommunications Account	~~.00~~	1.75
~~Volunteer Rescue/EMS Fund~~	~~.18~~	~~.18~~
~~Rescue Squad Workers' Relief Fund~~	~~.12~~	~~.12~~
Division of Air Quality	~~.00~~	.65.

(d) Emissions Program Account. – The Emissions Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle emissions inspection and maintenance program.

(d1) Telecommunications Account. – The Telecommunications Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to provide equipment and telecommunications services associated with the vehicle ~~safety and~~ emissions inspection and maintenance program.

(d2) Repealed by Session Law 2001-504, s. 3, effective July 1, 2007.

(e) Civil Penalties. – ~~Civil penalties collected under this Part shall be credited to the Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Division pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(f) Inspection Stations Required to Post Fee Information. – The Division shall approve the form and style of one or more standard signs to be used to display the information required by this subsection. The Division shall require that one or more of the standard signs be conspicuously posted at each inspection station in a manner reasonably calculated to make the information on the sign readily available to each person who presents a motor vehicle to the station for inspection. The sign shall include the following information:

(1) The maximum and minimum amounts of the inspection fee authorized by this section.

(2) The amount of the inspection fee charged by the inspection station and a statement that clearly indicates that the amount of the inspection fee is determined by the inspection station, that the inspection fee is retained by the inspection station to compensate the station for performing the inspection, and that the inspection fee is not paid to the State.

(3) The amount of the electronic inspection authorization fee, if the motor vehicle passes the inspection, a statement that the electronic inspection authorization fee is paid to the State, and a brief summary of the purposes for which the electronic inspection authorization fee is collected.

(4) The total fee to be charged if the motor vehicle passes the inspection.

(5) A statement that a vehicle that fails an inspection may be reinspected at the same station within 30 days of the inspection without payment of another inspection fee.

(g) Information on Receipt. – The information set out in subdivisions (1) through (5) of subsection (f) of this section shall be set out in not smaller than 12 point type and shall be shown graphically in the form of a pie chart on the inspection receipt.

~~(h) Subsections (f) and (g) of this section apply only to inspection stations that perform both emissions and safety inspections.~~

~~§ 20-183.7A. Penalties applicable to license holders and suspension or revocation of license for safety violations.~~

~~(a) Kinds of Violations. – The civil penalty schedule established in this section applies to safety self-inspectors, safety inspection stations, and safety inspection mechanics. The schedule categorizes safety violations into serious (Type I), minor (Type II), and technical (Type III) violations. A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the safety or emissions reduction benefits of the safety inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting a safety inspection or complying with the safety inspection requirements but does not directly affect the safety benefits or emission reduction benefits of the safety inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.~~

~~(b) Penalty Schedule. – The Division must take the following action for a violation:~~

~~(1) Type I. – For a first or second Type I violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years. For a first or second Type I violation within seven years by a safety inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by a safety inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.~~

~~(2) Type II. – For a first or second Type II violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within three years by a safety self-inspector or a safety inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days. For a first or second Type II violation within seven years by a safety inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by a safety inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.~~

~~(3) Type III. – For a first or second Type III violation within seven years by a safety self-inspector, a safety inspection station, or a safety inspection~~

~~mechanic, send a warning letter. For a third or subsequent Type III violation within seven years by the same safety license holder, assess a civil penalty of twenty-five dollars ($25.00).~~

~~(c) Station or Self-Inspector Responsibility. It is the responsibility of a safety inspection station and a safety self-inspector to supervise the safety inspection mechanics it employs. A violation by a safety inspection mechanic is considered a violation by the station or self-inspector for whom the mechanic is employed.~~

~~(d) Multiple Violations. If a safety self-inspector, a safety inspection station, or a safety inspection mechanic commits two or more violations in the course of a single safety inspection, the Division shall take only the action specified for the most significant violation.~~

~~(e) Mechanic Training. A safety inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4 and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully.~~

~~§ 20-183.7B. Acts that are Type I, II, or III safety violations.~~

~~(a) Type I. It is a Type I violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:~~

~~(1) Issue a safety electronic inspection authorization to a vehicle without performing a safety inspection of vehicle.~~

~~(2) Issue a safety electronic inspection authorization to a vehicle after performing a safety inspection of the vehicle and determining that the vehicle did not pass the inspection.~~

~~(3) Allow a person who is not licensed as a safety inspection mechanic to perform a safety inspection for a self-inspector or at a safety station.~~

~~(4) Sell, issue, or otherwise give an electronic inspection authorization to another, other than as the result of a vehicle inspection in which the vehicle passed the inspection.~~

~~(5) Be unable to account for five or more electronic inspection authorizations at any one time upon the request of an officer of the Division.~~

~~(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.~~

~~(7) Transfer an electronic inspection authorization from one vehicle to another.~~

~~(8) Conduct a safety inspection of a vehicle without driving the vehicle and without raising the vehicle and without opening the hood of the vehicle to check equipment located therein.~~

~~(9) Solicit or accept anything of value to pass a vehicle other than as provided in this Part.~~

~~(b) Type II. It is a Type II violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:~~

~~(1) Issue a safety electronic inspection authorization to a vehicle without driving the vehicle and checking the vehicle's braking reaction, foot brake pedal reserve, and steering free play.~~

~~(2) Issue a safety electronic inspection authorization to a vehicle without raising the vehicle to free each wheel and checking the vehicle's tires, brake lines, parking brake cables, wheel drums, exhaust system, and the emissions equipment.~~

~~(3) Issue a safety electronic inspection authorization to a vehicle without raising the hood and checking the master cylinder, horn mounting, power steering, and emissions equipment.~~

~~(4) Conduct a safety inspection of a vehicle outside the designated inspection area.~~

~~(5) Issue a safety electronic inspection authorization to a vehicle with inoperative equipment, or with equipment that does not conform to the vehicle's original equipment or design specifications, or with equipment that is prohibited by any provision of law.~~

~~(6) Issue a safety electronic inspection authorization to a vehicle without performing a visual inspection of the vehicle's exhaust system.~~

~~(7) Issue a safety electronic inspection authorization to a vehicle without checking the exhaust system for leaks.~~

~~(8) Issue a safety electronic inspection authorization to a vehicle that is required to have any of the following emissions control devices but does not have the device:~~

~~a. Catalytic converter.~~
~~b. PCV valve.~~
~~c. Thermostatic air control.~~
~~d. Oxygen sensor.~~
~~e. Unleaded gas restrictor.~~
~~f. Gasoline tank cap.~~
~~g. Air injection system.~~
~~h. Evaporative emissions system.~~
~~i. Exhaust gas recirculation (EGR) valve.~~

~~(9) Issue a safety electronic inspection authorization to a vehicle after failing to inspect four or more of following:~~

~~a. Emergency brake.~~
~~b. Horn.~~
~~c. Headlight high beam indicator.~~
~~d. Inside rearview mirror.~~
~~e. Outside rearview mirror.~~
~~f. Turn signals.~~
~~g. Parking lights.~~
~~h. Headlights—operation and lens.~~
~~i. Headlights—aim.~~
~~j. Stoplights.~~
~~k. Taillights.~~
~~l. License plate lights.~~
~~m. Windshield wiper.~~
~~n. Windshield wiper blades.~~
~~o. Window tint.~~

~~(10) Impose no fee for a safety inspection of a vehicle or the issuance of a safety electronic inspection authorization or impose a fee for one of these actions in an amount that differs from the amount set in G.S. 20-183.7.~~

~~(c) Type III. It is a Type III violation for a safety self-inspector, a safety inspection station, or a safety inspection mechanic to do any of the following:~~

~~(1) Fail to post a safety inspection station license issued by the Division.~~

~~(2) Fail to send information on safety inspections to the Division at the time or in the form required by the Division.~~

~~(3) Fail to post all safety information required by federal law and by the Division.~~

~~(4) Fail to put the required information on an inspection receipt in a legible manner using ink.~~

~~(5) Issue a receipt that is signed by a person other than the safety inspection mechanic.~~

~~(6) Place an incorrect expiration date on an electronic inspection authorization.~~

~~(7) Issue a safety electronic inspection authorization to a vehicle after having failed to inspect three or fewer of the following:~~

~~a. Emergency brake.~~
~~b. Horn.~~
~~c. Headlight high beam indicator.~~
~~d. Inside rearview mirror.~~
~~e. Outside rearview mirror.~~
~~f. Turn signals.~~
~~g. Parking lights.~~
~~h. Headlights—operation and lens.~~
~~i. Headlights—aim.~~
~~j. Stoplights.~~
~~k. Taillights.~~
~~l. License plate lights.~~
~~m. Windshield wiper.~~
~~n. Windshield wiper blades.~~
~~o. Window tint.~~

~~(d) Other Acts. The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation.~~

"§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. – A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars ($50.00):

(1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current electronic inspection authorization or otherwise.

(2) Allows an electronic inspection authorization to be issued to a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the electronic inspection authorization was issued or was not inspected properly.

(3) Issues an electronic inspection authorization on a vehicle, knowing or having reasonable grounds to know that an inspection of the vehicle was not performed or was performed improperly. A person who is cited for a civil penalty under G.S. 20-183.8B for an emissions violation involving the inspection of a vehicle may not be charged with an infraction under this subdivision based on that same vehicle.

(4) Alters the original certified configuration or data link connectors of a vehicle in such a way as to make an emissions inspection by analysis of data provided by on-board diagnostic (OBD) equipment inaccurate or impossible.

(b) Defenses to Infractions. – Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the electronic inspection authorization expired and a current electronic inspection authorization was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10

days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Law 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to ~~a safety inspection or~~ an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle or the electronic inspection authorization was issued to the vehicle when the citation was issued.

(c) Felony. – A person who does any of the following commits a Class I felony:

(1) Forges an inspection sticker or inspection receipt.

(2) Buys, sells, issues, or possesses a forged inspection sticker or electronic inspection authorization.

(3) Buys, sells, issues, or possesses an electronic inspection authorization other than as the result of either of the following:

a. Having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the electronic inspection authorization from the Division through an electronic authorization vendor in the course of business.

b. A vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(4) Solicits or accepts anything of value in order to pass a vehicle that fails a ~~safety or~~ an emissions inspection.

(5) Fails a vehicle for any reason not authorized by law.

"§ 20-183.8A. Civil penalties against motorists for emissions violations; waiver.

(a) Civil Penalties. – The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who engages in any of the emissions violations set out in this subsection. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. The civil penalties and violations are as follows:

(1) Fifty dollars ($50.00) for failure to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Two hundred fifty dollars ($250.00) for instructing or allowing a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Two hundred fifty dollars ($250.00) for incorrectly stating the vehicle's county of registration to avoid having an emissions inspection of the vehicle.

(b) Waiver. – The Division must waive the civil penalty assessed under subdivision (a)(1) of this section against a person who establishes the following:

(1) The person was continuously out of the State on active military duty from the date the inspection sticker expired to the date the four-month grace period expired.

(2) No person operated the vehicle from the date the inspection sticker expired to the date the four-month grace period expired.

(3) The person obtained a current inspection sticker within 30 days after returning to the State.

"§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. – The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics.

The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. – The Division must take the following action for a violation:

(1) Type I. – For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars ($1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars ($250.00) and revoke the mechanic's license for two years.

(2) Type II. – For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars ($100.00). For a third or subsequent Type II violation within three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars ($250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars ($50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars ($100.00) and suspend the mechanic's license for 90 days.

(3) Type III. – For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within three years by the same emissions license holder, assess a civil penalty of twenty-five dollars ($25.00).

(c) Station or Self-Inspector Responsibility. – It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A violation by an emissions inspector mechanic is considered a violation by the station or self-inspector for whom the mechanic is employed.

(d) Missing Stickers. – The Division must assess a civil penalty against an emissions inspection station, a windshield replacement station, or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

(d1) Penalty for Missing Stickers. – The amount of the penalty is twenty-five dollars ($25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as

the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b) of this section. Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b) of this section.

(e) Mechanic Training. – An emissions inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4A and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully.

"§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. – It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Issue an emissions electronic inspection authorization on a vehicle without performing an emissions inspection of the vehicle.

(1a) Issue an emissions electronic inspection authorization to a vehicle after performing an emissions inspection of the vehicle and determining that the vehicle did not pass the inspection.

(2) Use a test-defeating strategy when conducting an emissions inspection by changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year, or using data provided by the on-board diagnostic (OBD) equipment of another vehicle to achieve a passing result.

(3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.

(4) Sell, issue, or otherwise give an electronic inspection authorization to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.

(5) Be unable to account for five or more electronic inspection authorizations at any one time upon the request of an auditor of the Division.

~~(6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.~~

(7) Transfer an electronic inspection authorization from one vehicle to another.

(b) Type II. – It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer or to equipment to analyze data provided by on-board diagnostic (OBD) equipment.

(2) Keep compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Issue ~~a safety electronic inspection authorization or~~ an emissions electronic inspection authorization on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.

i. Exhaust gas recirculation (EGR) valve.

(4) Issue ~~a safety electronic inspection authorization or~~ an emissions electronic inspection authorization on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions electronic inspection authorization or impose a fee for one of these actions in an amount that differs from the amount set in G.S. 20-183.7.

(c) Type III. – It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Fail to post an emissions license issued by the Division.

(2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.

(3) Fail to post emissions information required by federal law to be posted.

(4) Repealed by Session Law 2007-503, s. 16, effective October 1, 2008.

(5) Fail to put the required information on an inspection receipt in a legible manner.

(6) Repealed by Session Laws 2007-503, s. 16, effective October 1, 2008.

(d) Other Acts. – The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation.

"§ 20-183.8D. Suspension or revocation of license.

~~(a) Safety. – The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.~~

(b) Emissions. – The Division may suspend or revoke an emissions self-inspector license, an emissions inspection station license, and an emissions inspection mechanic license issued under this Part for any of the following reasons:

(1) The suspension or revocation is imposed under G.S. 20-183.8B.

(2) Failure to pay a civil penalty imposed under G.S. 20-183.8B within 30 days after it is imposed.

"§ 20-183.8E: Recodified as G.S. 20-183.8G at the direction of the Revisor of Statutes.

"§ 20-183.8F. Requirements for giving license holders notice of violations and for taking summary action.

(a) Finding of Violation. – When an auditor of the Division finds that a violation has occurred that could result in the suspension or revocation of an inspection station license, a self-inspector license, or a mechanic license, ~~or the registration of a person engaged in the business of replacing windshields,~~ the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the completion of the investigation that resulted in the discovery of the violation. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. – When the Division decides to charge an inspection station, a self-inspector, ~~a mechanic, or a person who is engaged in the business of replacing windshields~~ or a mechanic with a violation that could result in the suspension or revocation of the person's license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. – The right granted by subsection (b) of this section to have a hearing before a license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an inspection station, a self-inspector, or a mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review.

(d) A notice or statement prepared pursuant to this section or an order of the Division that is directed to a mechanic may be served on the mechanic by delivering a copy of the notice, statement, or order to the station or to the place of business of the self-inspector where the mechanic is employed.

"§ 20-183.8G. Administrative and judicial review.

(a) Right to Hearing. – A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

(1) The Division denies the person's application for a license or registration.

(2) The Division delivers to the person a written statement of charges of a violation that could result in the suspension or revocation of the person's license.

(3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.

(4) The Division assesses a civil penalty against the person.

(5) The Division issues a warning letter to the person.

(6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within three business days after receiving the request unless the person requesting the hearing asks for additional time to prepare for the hearing. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. – When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. – When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. – The Commissioner may conduct a hearing required under this section or may designate a person to conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. – A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. A decision made after a hearing on any other action may uphold or modify the action.

(g) Judicial Review. – Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section."

SECTION 2. G.S. 20-87 reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

(a) These fees shall be paid to the Division annually for the registration and licensing of passenger vehicles, according to the following classifications and schedules:

(1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars ($78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents ($1.40) per hundred pounds of empty weight of the vehicle.

(2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00
Automobiles:	15 or fewer passengers	$51.00
Buses:	16 or more passengers	$2.00 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00.

(3) Repealed by Session Laws 1981, c. 976, s. 3.

(4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.

(5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private

passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers $28.00

Private passenger vehicles over fifteen passengers 31.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be fifteen dollars ($15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be twenty-two dollars ($22.00). An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.

(7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.

(8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.

(9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and license fee on house trailers shall be eleven dollars ($11.00) for the license year or any portion thereof.

(10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.

(11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars ($3.00) to arrive at the total fee.

(12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private ~~passengers—~~passenger vehicles of not more than 15 passengers.

(b) An additional fee of one dollar ($1.00) is imposed on each vehicle registered under this section, in addition to the base fee and any other additional fee required. The revenue derived from this fee shall be distributed as follows:

Recipient	Amount
Highway Fund	.78
Volunteer Rescue/EMS Fund	.13
Rescue Squad Workers' Relief Fund	.09."

SECTION 3. G.S. 20-88 is amended by adding a new subsection to read:

"(b1) An additional fee of one dollar ($1.00) is imposed on each vehicle registered under this section, in addition to the base fee and any other additional fee required. The revenue derived from this additional fee shall be distributed as follows:

Recipient	Amount
Highway Fund	.78
Volunteer Rescue/EMS Fund	.13
Rescue Squad Workers' Relief Fund	.09."

SECTION 4. G.S. 20-122.1(b) reads as rewritten:

"(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. ~~It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways.~~ Violation of this section shall not constitute negligence per se."

SECTION 5. G.S. 20-127(d) reads as rewritten:

"(d) Violations. – A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle ~~that is subject to a safety inspection in this State~~ and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section."

SECTION 6. The Division of Motor Vehicles, with the assistance of the Department of Environment and Natural Resources, Division of Air Quality, shall develop and implement a management improvement plan for the Motor Vehicle Emissions Inspection program, authorized by Article 3A of Chapter 20 of the General Statutes, administered by the Division of Motor Vehicles, to increase efficiency, reduce costs, and improve customer service. The plan shall include:

(1) Reviews on how inspection program data is managed and analyzed.

(2) Performance metrics for program assessment as defined by the Division and the Office of State Budget and Management.

(3) An assessment of the types of reports that would be most useful to agencies, including field staff and management, the General Assembly, industry personnel, the Environmental Protection Agency, and the public.

(4) A roadmap for how program information will be collected, analyzed, monitored, and presented.

(5) Appropriate allocation of personnel and resources to accomplish program oversight.

The plan shall meet both federal and State reporting requirements.

SECTION 7. The Division of Motor Vehicles shall present the management improvement plan for the Motor Vehicle Emissions Inspection program, authorized by Article 3A of Chapter 20 of the General Statutes, to the Joint Legislative Transportation Oversight Committee and the Joint Environment and Natural Resources Oversight Committee no later than December 31, 2009. The Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee annually, not later than January 15 of each year, on the prior fiscal year and include any recommended legislation that will increase efficiency, reduce costs, and improve customer service.

SECTION 8. The Fiscal Research Division of the General Assembly shall conduct a fiscal review of the Motor Vehicle Emissions Inspection program. The fiscal review shall include:

(1) A determination of whether the fees charged for inspections is adequate.
(2) An assessment of revenue projections.
(3) A determination of whether adjustments need to be made to current inspection fees.
(4) A proposal for how inspection fees should be determined.
(5) An assessment of how inspection program budgets are planned and what changes are needed to improve efficiency.

The Fiscal Research Division of the General Assembly shall report its findings to the Joint Legislative Transportation Oversight Committee, the Joint Environment and Natural Resources Oversight Committee, the Joint Program Evaluation Oversight Committee, and the Program Evaluation Division of the General Assembly no later than May 1, 2010.

SECTION 9. Sections 1, 2, and 3 of this act become effective October 1, 2009, and apply to motor vehicles inspected or registered on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 849:
Repeal Motor Vehicle Safety Inspections

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	July 21, 2009
Introduced by:	Sen. Albertson	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 849 would:

- ***Repeal the motor vehicle safety inspection program, eliminating the requirement that vehicles undergo an annual safety inspection.***
- ***Increase motor vehicle registration fees by $1.00 to recoup funds that would no longer be generated by the safety inspection fee to go to the Highway Fund, the Volunteer Rescue/EMS Fund, and the Rescue Squad Workers' Relief Fund.***
- ***Require the Division of Motor Vehicles to develop a management improvement plan for the motor vehicle emissions inspection program, and to report annually to the Joint Legislative Transportation Oversight Committee recommendations to improve the program.***
- ***Require the Fiscal Research Division to conduct a fiscal review of the emissions inspection program.***

CURRENT LAW: Under Article 3A of Chapter 20 of the General Statutes, motor vehicles are required to undergo an annual safety inspection to determine whether they are properly equipped and that the required equipment is in a safe operating condition. A license issued by the Division of Motor Vehicles is required to perform safety inspections, and penalties may be imposed on persons who perform inspections in violation of the article and persons who operate vehicles that have not been inspected in accordance with the article. The fee for a safety inspection is set by statute, and portions of the fee go to the Highway Fund, the Volunteer Rescue/EMS Fund, and the Rescue Squad Workers' Relief Fund.

BILL ANALYSIS: **Section 1** of Senate Bill 849 would repeal the motor vehicle safety inspection program and would make conforming changes throughout Article 3A.

Sections 2 and 3 of the bill would increase the annual registration fee for passenger vehicles and property-hauling vehicles by $1.00. The additional fee would be distributed to the Highway Fund ($.78), the Volunteer Rescue/EMS Fund ($.13), and the Rescue Squad Workers' Relief Fund ($.09). Those funds would no longer be receiving a portion of safety inspection fees.

Sections 4 and 5 of the bill would make conforming changes to other statutes in Chapter 20 that reference safety inspections and safety inspection stations.

Sections 6 and 7 of the bill would require the Division of Motor Vehicles to develop and implement a management improvement plan for the motor vehicle emissions inspection program in order to increase efficiency, reduce costs, and improve customer service. The Division would be required to present the plan to the Joint Legislative Transportation Oversight Committee no later than December 31, 2009. The Division would also be required to report to the Committee annually with recommendations on how to increase efficiency, reduce costs, and improve customer service.

Section 8 of the bill would require the Fiscal Research Division to conduct a review of the emissions inspection program to determine if inspection fees are adequate, if they should be adjusted, and how they should be determined; to assess revenue projections; and to assess how inspection program budgets are planned and what changes are needed. The Division would be required to report its findings no later than May 1, 2010.

EFFECTIVE DATE: The repeal of the safety inspection program and provisions authorizing new motor vehicle registration fees would become effective October 1, 2009, and apply to motor vehicles inspected or registered on or after that date. The remainder of the bill would be effective when it becomes law.

S849-SMSU-143(e1) v3

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

July 28, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
DR ROBERT PARR	PHYSICIANS FOR CEMENT MORATORIUM 8115 MARKET ST WILMINGTON, NC 28411
Allie Sheffield	Peeler Watch Hampstead, NC
Edmund McCaffrey	New Hanover County Schools Administrator
Lauren Hazlett	UNCW ECO / NCCF Wilmington NC
Loretta Bauer	UNC W Env. Studies / NCCF
Robert Pulvereati	Independent Stage Owners
Jane Horst	Citizen Against TITAN
John Merritt	MWCLLC
Preston Howard	NCIC
Mila Gilda	NC Coastal Federation
Glotel Gisler	SELL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

July 28, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Massengill	Massengill's Auto Service, Inc.
Lauren Youngman	Cape Fear River Watch
Diane Upton	Cape Fear River Watch
Alma Morrow	NCCN
CARL SUMMERFIELD	234 E CAMBST CHARLOTTE NC 28202 SUMMERFIELD AUTO SERVICE IGO
Thurman Porter	Perfection Exhaust Inc 10015 University Pkwy Rural Hall 27045
[illegible]	ATRT
Leslie Arnold	EOG-Daily Bulletin
VL McBride	NCDA
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
MB Burnett	See State

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Barbara D'zam-Terry	304 Harlandale Dr STOPTITAN.ORG Wilmington NC 28411
Nicole Rollins	304 Harlandale Dr.
Brandon, Brody, & Ava	Wilmington, NC 28411 STOPTITAN.ORG
Cary Cover	BPMHL
Rita Harris	NC Commerce
George Everett	Duke Energy
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 28, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Heather Kelejian	Wilmington NC (CCFRW)
Caitlin Kielhorn	Wilmington NC (CFRW)
JE Hobbs	HANC
Amy Schulder	MHC
Lillette Granade	Southern Environmental Law Center
Melanie Soler	DCR

SENATE COMMERCE COMMITTEE
Tuesday, August 4, 2009 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on August 4, 2009, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles presided. Yates Parrish, Iris Caldwell, and Walt Whitehead of Raleigh, Elizabeth Rogers of Thomasville, Sloan Walters of Lexington, and Daniel Smith of Holly Springs served as pages.

H.B. 1166 – Insurance Law Changes.

Representative Ray was recognized to explain the bill. It makes various changes in the laws governing insurance producers and brokers, bail bondmen, motor clubs, premium finance companies, and collection agencies, and deletes obsolete references to assignments of error. Senator Rand offered a technical amendment which changed the effective date and moved for its adoption. The motion carried. Senator Rand offered a second amendment which allows an appellant to appeal for any grounds of relief that were not set forth in his notice of appeal. Senator Rand moved for its adoption and the motion carried. Senator Rand offered a third amendment regarding insurers providing certain life insurance information to funeral directors. Senator Rand moved for its adoption and the motion carried. Senator Rand moved for a favorable report and to refer the bill to the Senate Finance Committee. The motion carried. A copy of the bill, the summary and the three amendments is attached.

H.B. 1637 – Modernize Precious Metal Business Permitting.

Representative Samuelson was recognized to explain the bill. Senator McKissick moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS modernizes the record keeping of precious metals purchases by dealers, subjects all dealers in precious metals to similar record-keeping requirements, increases precious metals permitting fees, requires that a criminal history record check be conducted on employees of precious metals dealers, and makes various other changes to the precious metals permitting statutes. Senator Rand moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1151 – Res. Lead-Based Paint Hazards/Renovations.

Representative Farmer-Butterfield was recognized to explain the bill. It establishes requirements for certification of persons performing lead-based paint renovation work in certain residential housing and child-occupied facilities; and requires accreditation of renovation trainers and renovation training courses. Senator Jenkins moved for a favorable report and the motion carried. A copy of the bill and the summary is attached.

The meeting adjourned at 11:18 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, August 04, 2009

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

FAVORABLE

H.B.(CS #1) **1151** Res. Lead-Based Paint Hazards/Renovations.
Sequential Referral: Finance
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1637** Modernize Precious Metal Business Permitting.
Draft Number: 80501
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, August 04, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1166** Insurance Law Changes.-AB

Draft Number:	30445
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	August 4, 2009	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1151	Res. Lead-Based Paint Hazards/Renovations.	Representative Earle Representative England, M.D. Representative Farmer-Butterfield Representative Rapp
HB 1166	Insurance Law Changes.-AB	Representative Goforth Representative Wray
HB 1637	Modernize Precious Metal Business Permitting.	Representative Dickson Representative Samuelson

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, August 4, 2009, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1151	Res. Lead-Based Paint Hazards/ Renovations.	Rep. Earle Rep. England Rep. Farmer-Butterfield Rep. Rapp
HB 1166	Insurance Law Changes.-AB	Rep. Goforth Rep. Wray
HB 1637	Modernize Precious Metal Business Permitting.	Rep. Dickson Rep. Samuelson

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 8, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Cagle	DLC + Assoc.
Jessi Hays	NC HBA
Cameron Hardaway	Electric Cities of NC
Cady Thomas	NCAR

VISITOR REGISTRATION SHEET

(4)

Senate Commerce Committee — August 8, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mary Gigure	DHHS/DPH
Chris Hoke	DHHS/DPH
S Wilson	DHHS
Robert Pasichal	Young Moore
Katrina English	NCCN
Alicia Davis	MWC
Becki Gray	John Locke Foundation
Marvin Waters	CCPS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
	NCSJA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 8, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Danny Linebach	DHHS
Jennifer Willis	NLCS
Suzanne Malysz	SEANC
Ardis Watkins	SEANC
Elizabeth Dalton	NORMA
[illegible]	Raynor Group

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 8, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kim Cowell	NCBA
Jean Holliday	NCDOI
[illegible]	NMRS
[illegible]	JD, AL, PA
Mark [illegible]	Work for Marvin Smith
[illegible]	Explorer of Adventure
Jennifer Cohen	DENR
Debra DeCamillis	UNC IOG
[illegible]	NCPBA
Donald Chaney	NC DHHS-HHCH
Stephen Wohlwend	NCDOI

HOUSE BILL 1166

Committee Substitute Favorable 6/1/09
Committee Substitute #2 Favorable 7/22/09
Fourth Edition Engrossed 7/23/09

Short Title: Insurance Law Changes.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING INSURANCE PRODUCERS AND BROKERS, BAIL BONDSMEN; MOTOR CLUBS, PREMIUM FINANCE COMPANIES, AND COLLECTION AGENCIES, AND TO DELETE OBSOLETE REFERENCES TO ASSIGNMENTS OF ERROR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-10 is amended by adding a new subdivision to read:

"(4a) "FINRA" means the Financial Industry Regulatory Authority or any successor entity."

SECTION 2. G.S. 58-33-26(e) reads as rewritten:

"(e) A variable life and variable annuity products license authorizes a resident agent to sell, solicit, or negotiate variable contracts if the agent satisfies the Commissioner that the agent has met the ~~National Association of Securities Dealers~~FINRA requirements of the Secretary of State of North Carolina."

SECTION 3. G.S. 58-33-26(p) reads as rewritten:

"(p) An individual shall not simultaneously hold ~~an agent's~~a property, casualty, or personal lines insurance license and an adjuster's license in this State. An individual who holds a ~~property and liability~~property, casualty, or personal lines insurance license may apply for an adjuster license without having to take the adjuster examination in G.S. 58-33-30(e) if the individual applies for the adjuster license within 60 days after surrendering the ~~property and liability~~property, casualty, or personal lines insurance license. An individual who holds an adjuster license may apply for a property and liability insurance license without having to take the property and liability insurance agent examination in G.S. 58-33-30(e) if the individual applies for the ~~property and liability~~property, casualty, or personal lines insurance license within 60 days after surrendering the adjuster license."

SECTION 4. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-33-48. Criminal history record checks.**

(a) An applicant for an insurance producer license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of

Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) This section does not apply to a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license."

SECTION 5. G.S. 58-33-32(k) reads as rewritten:

"(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. As used in this subsection, "administrative action" includes enforcement action taken against the producer by the ~~National Association of Securities Dealers.~~FINRA. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 6.(a) G.S. 58-33-35 is repealed.

SECTION 6.(b) G.S. 58-33-30(e)(1) reads as rewritten:

"(e) Examination.

(1) After completion and filing of the application with the Commissioner, ~~except as provided in G.S. 58-33-35,~~ the Commissioner shall require each applicant for license as an agent or an adjuster to take an examination as to the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner."

SECTION 7. G.S. 58-33-40(a) reads as rewritten:

"(a) ~~No~~ Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed."

SECTION 8. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. ~~Upon the appointment, the~~The individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited."

SECTION 9. G.S. 58-33-40(c) and (h) are repealed.

SECTION 10. G.S. 58-33-46(a)(2) and (a)(6) read as rewritten:

"**§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.**

(a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

...

(2) Violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the ~~National Association of Securities Dealers.~~FINRA.

...

(6) Having been convicted of a ~~felony,~~felony or a misdemeanor involving dishonesty, a breach of trust, or ~~a misdemeanor involving~~ moral turpitude."

SECTION 11. G.S. 58-21-65(f) reads as rewritten:

"(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter."

SECTION 12. G.S. 58-71-50(a) reads as rewritten:

"(a) An applicant for a license as a bail bondsman or runner shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant."

SECTION 13. G.S. 58-71-70 reads as rewritten:

"**§ 58-71-70. Examination; fees.**

Each applicant for a license as a professional bondsman, surety bondsman, or runner shall appear in person and take ~~a written~~an examination prepared by the Commissioner testing the applicant's ability and qualifications. Each applicant is eligible for examination 30 days after the date the application is received by the Commissioner. If an applicant is unable to complete the examination requirement within 30 days after notification from the Commissioner of the applicant's eligibility to take the examination, the applicant shall again be subject to the criminal history record check prescribed by G.S. 58-71-50(a) so that current information is available for review with the application. Each examination shall be held at a time and place as designated by the Commissioner. Each applicant shall be given notice of the designated time and place no sooner than 15 days before the examination. The Commissioner may contract with a person to process applications for the examination and administer and grade the examination in the same manner as for agent examinations under Article 33 of this Chapter.

The fee for each examination is twenty-five dollars ($25.00) plus an amount that offsets the cost of any contract for examination services. This examination fee is nonrefundable.

An applicant who fails an examination may take a subsequent examination, but at least one year must intervene between examinations."

SECTION 14. G.S. 58-71-45 reads as rewritten:

"**§ 58-71-45. Terms of licenses.**

A license issued to a bail bondsman or to a runner authorizes the licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal licenses. After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel ~~the runner's license and~~ the runner's authority to act for the professional bondsman."

SECTION 15. G.S. 58-71-120 reads as rewritten:

"**§ 58-71-120. Bail bondsman to give notice of discontinuance of business; cancellation of license.**

Any bail bondsman who discontinues writing bail bonds during the period for which ~~he~~ the bail bondsman is licensed shall ~~notify the clerks of the superior court with whom he is registered and~~ return ~~his~~ the license to the Commissioner for cancellation within 30 days after ~~such~~ the discontinuance."

SECTION 16. G.S. 58-70-40(b) reads as rewritten:

"(b) If an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere."

SECTION 17. G.S. 58-70-40 is amended by adding a new subsection to read:

"(e) A collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 18. Article 69 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-69-60. Notification of criminal or administrative actions.**

(a) If an individual proprietor, officer, or partner of a motor club has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the motor club shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) A motor club shall report to the Commissioner any administrative action taken against the motor club by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 19. Article 35 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-35-22. Notification of criminal or administrative actions.**

(a) If an individual proprietor, officer, or partner of an insurance premium finance company has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the premium finance company shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) An insurance premium finance company shall report to the Commissioner any administrative action taken against the premium finance company, including any branch office, by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 20. G.S. 58-2-69(b) reads as rewritten:

"(b) Every applicant for a license shall inform the Commissioner of the applicant's residential ~~address.~~address and provide the applicant's e-mail address to which the Commissioner can send electronic notifications and other messages. Every licensee shall give

written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new ~~residence.~~residence or obtains a different e-mail address. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee shall notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars ($50.00) to the Commissioner."

SECTION 21. G.S. 58-70-5 is amended by adding two new subsections to read:

...

"(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities Exchange Commission, in lieu of complying with subsection (k) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subsection (k) of this section."

SECTION 22. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-70-6. Definitions.**

For purposes of G.S. 58-70-5 and this section, the following definitions apply:

(1) An "affiliate" of or a person "affiliated" with a specific person. – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.

(2) Control, including the terms "controlling," "controlled by," and "under common control with." – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.

(3) Holding company system. – An entity comprising two or more affiliated persons.

(4) Person. – An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

(5) Subsidiary of a specified person. – An affiliate controlled by that person indirectly through one or more intermediaries or directly.

(6) Voting security. – Includes any security convertible into or evidencing a right to acquire a voting security."

SECTION 23. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-58-97. Provision of life insurance information upon notification of insured's death.**

(a) Any person licensed to practice funeral directing or any employee of a funeral establishment licensed under the provisions of Article 13A of Chapter 90 of the General Statutes providing funeral service, as that term is defined in G.S. 90-210.20, for a deceased person insured or believed to be insured under a contract of life insurance may request information regarding the deceased person's life insurance contracts by providing an insurer with (i) a copy of a notification of death filed pursuant to G.S. 130A-112; and (ii) written authorization from the person or persons with legal authority to direct disposition of the deceased's body as prescribed under G.S. 90-210.124 or G.S. 130A-420. As soon as possible after receipt of the request, the life insurance company shall inform the person authorized by this section to make an inquiry of the following:

(1) The existence of any contract insuring the life of the deceased person.

(2) Any beneficiaries on record under any life insurance contract insuring the life of the deceased person.

(3) The amount of any liens or loans outstanding on the policy.

(4) The amount of benefits payable to the beneficiaries.

(5) Whether the policy has been reinstated within the last 24 months.

The insurer shall provide a claim form to any person or assignee making the request.

(b) If any person making a written request under subsection (a) of this section who has provided all the information required by subsection (a) of this section does not receive a timely response from the insurer, then the person may refer the request to the Consumer Services Division of the Department, which shall treat the referral as a consumer complaint. The referral shall include all the information provided to the insurer under subsection (a) of this section as well as copies of all communications and information received from the insurer regarding the request for information.

(c) If the beneficiary of record under the life insurance contract is not the estate of the deceased, then any person authorized to request information under subsection (a) of this section shall make reasonable efforts to locate the beneficiaries within 100 hours of receiving information from the insurance carrier regarding any life insurance contracts and shall provide to all beneficiaries all documents and information obtained from the insurance carrier. The person obtaining the information shall also inform all beneficiaries in writing in bold print that "THE BENEFICIARY OF A LIFE INSURANCE POLICY HAS NO LEGAL DUTY OR OBLIGATION TO SPEND ANY OF THAT MONEY ON THE FUNERAL, DEBTS, OR OBLIGATIONS OF THE DECEASED" and shall do so before discussing with the beneficiaries financial arrangements for burial of the deceased.

(d) Any licensee or employee of a funeral establishment licensed under Article 13A of Chapter 90 of the General Statutes who makes a false request for information under this section or fails to do that required by subsection (c) of this section shall be deemed guilty of fraud or misrepresentation in the practice of funeral service as defined in G.S. 90-210.25(e)(1)b. and unfit to practice funeral service."

SECTION 24. G.S. 58-39-75 is amended by adding a new subdivision to read:

"(4a) To a person making an inquiry under G.S. 58-58-97 when providing funeral service to a deceased insured; or"

SECTION 25. The Department shall report to the Chairs of the House Insurance Committee and the Senate Commerce Committee by March 1, 2011, the number of insurance policy beneficiary information inquiries referred to it under G.S. 58-58-97, as enacted by this act; the identity of the insurers whose refusal or delay resulted in the referrals; the reasons the insurers were unable to respond to the inquiries; and any recommendations for administrative, legislative, or regulatory changes needed to enhance the ability of individuals arranging for

funeral services to obtain timely access to information about life insurance policies held by a deceased person.

SECTION 26. G.S. 58-2-85 reads as rewritten:

"**§ 58-2-85. Procedure on appeal under § 58-2-80.**

Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to the following provisions:

(1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of appeal.~~appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commissioner.~~

(2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

~~(3) The Commissioner may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commissioner.~~

(4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.

(5), (6) Repealed by Session Laws 1975, c. 391, s. 11.

(7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.

(8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.

(9) In any appeal to the Court of Appeals, the complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.

(10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law."

SECTION 27. G.S. 58-2-90(a) reads as rewritten:

"(a) On appeal the court shall review the record ~~and the exceptions and assignments of error~~ in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals."

SECTION 28. Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18, and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. Sections 26 and 27 of this act become effective October 1, 2009, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1166:
Insurance Law Changes.-AB

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	August 3, 2009
Introduced by:	Reps. Goforth, Wray	**Prepared by:**	Tim Hovis*
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 1166 is an agency bill that makes a number of changes to the laws related to licensing property, casualty or personal lines insurance agents, bail bondsmen, surplus lines carriers, collection agencies, insurance premium finance companies, and authorizes the release of life insurance coverage and benefits information to certain persons providing funeral services.***

The bill revises Section 23 of the bill to include the following as recommended by the subcommittee:

- ***Specifies that only persons licensed to practice funeral directing or employees of licensed funeral homes may request information about a deceased person's life insurance policy.***
- ***Adds information about whether a policy has been reinstated within the last 24 months (which would reduce benefits) to the items to be released on request.***
- ***Adds a new subsection (c) to proposed G.S. 58-58-97 to direct persons who have received the information to 'make reasonable efforts' to locate the beneficiaries within 100 hours of receiving the information, in cases where the beneficiary of record is not the estate of the deceased. Requires recipients of this information, before they may discuss the financial arrangements for burial of the deceased with beneficiaries, to inform all beneficiaries, in bold print, that they have no obligation to spend any of the life insurance money on the funeral or other debts or obligations of the deceased.***
- ***Adds a new subsection (d) to deem anyone making a false request for information under the new section or failing to comply with the requirements of (c) to be guilty of fraud or misrepresentation in the practice of funeral service and unfit to practice funeral service.***

BILL ANALYSIS:

Section 1 provides that the Financial Industry Regulatory Authority or any successor entity may be referred to as "FINRA" in Article 33 of Chapter 58

Sections 2, 5 and 10 substitute FINRA for the current term "National Association of Securities Dealers" in G.S. 58-33-26(e), G.S. 58-33-32(k), and G.S. 58-33-46(a) (2).

Section 3 clarifies existing law which provides that an individual may not simultaneously hold both a license as an adjuster and a license for property, casualty or personal lines insurance.

Section 4 requires individuals applying for a license as an agent, broker, limited representative, adjuster or motor vehicle damage appraiser to submit to a criminal background check as part of the licensure process. This requirement becomes effective October 1, 2010 and would apply to applications made on or after that date.

Section 6 repeals G.S. 58-33-35 which exempts certain applicants for an agent's license from taking an examination.

Sections 7 and 8 clarify the process by which an insurer may appoint an individual as an agent and requires the insurer to notify the Commissioner within 15 days of that appointment.

Section 9 repeals provisions that are made redundant because of the changes in Sections 7 and 8.

Section 10 allows the Commissioner to suspend, revoke, refuse to renew or put on probation an insurance license if the individual has been convicted a felony involving moral turpitude.

Section 11 requires that nonresident surplus lines licensees are to be licensed under the procedures applicable to agents, brokers, limited representatives, adjuster and motor vehicle damage appraisers.

Section 12 allows the Commissioner to specify the manner by which applicants for a bail bondsman or runner licenses must submit their fingerprints for a criminal background check.

Section 13 requires an applicant for a bail bondsman or runner license who is not able to complete the examination requirement within 30 days after notification of the commissioner to submit to another criminal background check.

Section 14 removes a provision that appears to allow a professional bondsman who ceases to employ a runner to cancel that runner's license.

Section 15 removes a provision that required a bail bondman who discontinues writing bail bonds to notify the clerk of court of that discontinuance

Sections 16, 17, 18 and 19 require owners of collection agencies, motor clubs and insurance premium finance companies to notify the Commission of any criminal conviction involving dishonesty or breach of trust and of any administrative action by another state or another governmental agency. These requirements become effective October 1, 2009.

Section 20 requires applicants for a license under Chapter 58 to provide the Commissioner with an e-mail address as well as a residential address, and to notify the Commissioner of any change in the e-mail address.

Section 21 adds two new subsections to G.S. 58-70-5 "Application to Commissioner for permit" - Subsection (r) allows applicants who are subsidiaries of a parent holding company, and who apply for a permit to "carry on the collection agency business..." to file the parent company's balance sheet accompanied by a guarantee by the parent company of the subsidiary's performance, instead of the current requirement that the subsidiary file its own balance sheet. Subsection (s) provides that the parent company remains responsible for the guarantee of performance provided under (r), unless a new parent company acquires the subsidiary and files a new guarantee of the subsidiary's performance, or the subsidiary files its own balance sheet as provided under current law.

Sections 22 sets forth a definition section for application in Article 70 "Collection Agencies".

Section 23 allows for persons licensed to practice funeral directing or employees of licensed funeral homes to request information from an insurer regarding coverage of a deceased person under a life insurance contract *(was "Any person providing funeral service...")*. Requires that requestor provide insurer with a copy of the notification of death and a written authorization from the deceased person's next of kin or person financially responsible for the services.

The new provision then directs the insurer to inform the requestor of:

- The existence of any contract insuring the life of the deceased.
- Beneficiaries on record.
- The amount of outstanding liens or loans on the policy.
- The amount of benefits payable to the beneficiaries.

- Whether the policy has been reinstated within the last 24 months. *(added in new PCS)*

The new provision allows persons not receiving timely responses from insurers to refer the requests, with accompanying information, to the Department for follow-up as a consumer complaint.

Subsection (c) to the proposed G.S. 58-58-97 directs persons who have received the information to 'make reasonable efforts' to locate the beneficiaries within 100 hours of receiving the information and to provide the beneficiaries with all documentation and information they received from the insurer, in those cases where the beneficiary of record is not the estate of the deceased. This new subsection also requires recipients of this information to inform all beneficiaries, in bold print, that they have no obligation to spend any of the life insurance money on the funeral or other debts or obligations of the deceased, before they may discuss with the beneficiaries financial arrangements for burial of the deceased.

The new subsection (d) deems anyone making a false request for information under the new section or failing to comply with the requirements of subsection (c) to be guilty of fraud or misrepresentation in the practice of funeral service and unfit to practice funeral service. Pursuant to G.S. 90-210.25(e), this would authorize the Board to suspend, revoke or refuse to renew a license, or to accept from the licensee payment of a penalty not to exceed $5,000.

Section 24 adds "...a person providing funeral service to a deceased insured making an inquiry under G.S. 58-58-97." to the list of persons currently authorized under G.S. 58-39-75 to be given personal or privileged information about an individual by an "...insurance institution, agent, or insurance-support organization...".

Section 25 directs the Department to report to the Chairs of the House Insurance and Senate Commerce committees by March 1, 2011 a range of information (including the number of insurance policy beneficiary information inquiries referred to it, the identities of insurers involved, reasons for delays, etc.) relating to requests of insurers referred to the Department for follow-up under the provisions of the new G.S. 58-58-97.

Sections 26 and 27 amend G.S. 58-2-85 and 58-2-90 respectively concerning appeals of the Commissioner's final decisions to the N.C. Court of Appeals. These sections delete language requiring exceptions to the final order to be set forth with the Commissioner and assignments of error for the Court's review. The North Carolina Court of Appeals no longer requires assignments of error.

EFFECTIVE DATE: Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18 and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. The remainder of this act is effective when it becomes law

Kory Goldsmith and Ben Popkin, Staff Attorneys, substantially contributed to this summary.

H1166-SMRG-102(e4) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

8

EDITION No. _____

H. B. No. 1166 DATE Aug. 4, 2009

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Rand
)
Sen.)

moves to amend the bill on page 8, lines 4-5

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following

"SECTION 29. If Senate Bill 660 becomes law, then Section 3 of that act reads as rewritten:

"SECTION 3. This act becomes effective January 1, 2010, ~~November 1, 2009~~, and applies to motor vehicle liability insurance policies issued or renewed on or after that date."";

and by renumbering the remaining sections accordingly.

SIGNED Tony Rand

ADOPTED R. O. Allen FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

AMENDMENT TO H.B. 1166

G.S. 58-2-90(c) reads as rewritten:

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. ~~The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commissioner.~~

838873

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1166

AMENDMENT NO. 3.
(to be filled in by Principal Clerk)

H1166-ARG-52 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Date _____,2009

Senator _____

moves to amend the bill on page 1, line 4,
by inserting between the word "AGENCIES," and the word "AND" the following: "TO REQUIRE AN INSURER TO PROVIDE CERTAIN INFORMATION REGARDING A DECEASED PERSON'S LIFE INSURANCE TO A FUNERAL DIRECTOR OR ESTABLISHMENT,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1637
Committee Substitute Favorable 7/6/09
Committee Substitute #2 Favorable 7/20/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1637-CSSUf-83 [v.3]

8/3/2009 11:35:33 AM

Short Title: Modernize Precious Metal Business Permitting. (Public)

Sponsors:

Referred to:

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE RECORD KEEPING OF PRECIOUS METALS PURCHASES BY DEALERS, TO SUBJECT ALL DEALERS IN PRECIOUS METALS TO SIMILAR RECORD-KEEPING REQUIREMENTS, TO INCREASE PRECIOUS METALS PERMITTING FEES, TO REQUIRE THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON EMPLOYEES OF PRECIOUS METALS DEALERS, AND TO MAKE VARIOUS OTHER CHANGES TO THE PRECIOUS METALS PERMITTING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-164 reads as rewritten:

"**§ 66-164. Definitions.**

~~Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:~~ The following definitions apply in this Article:

(1) ~~"Dealer" means a~~ Dealer. – A person who ~~engages in the business of purchasing~~ purchases precious metals from the ~~public~~ public, other than by an exempted transaction, in the form of jewelry, flatware, silver ~~services~~ services, or other forms and holds himself or herself out to the public by signs, ~~advertising~~ advertising, or other methods as engaging in such ~~purchases~~ purchases, including any independent contractor purchasing precious metals under any arrangement in any department ~~store;~~ store. ~~provided, however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiquities and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all~~

~~such secondhand items or articles in the 12-month period next preceding the date of application for an exemption under G.S. 66-166. Provided further that pawnbrokers as defined in G.S. 91A-3 shall be exempted insofar as they accept~~ An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this Article and (ii) not subject to the requirements of this Article, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:

a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.

b. ~~pawns or pledges~~ Pawns, pledges, or purchases of items made of precious ~~metals under the provisions of Chapter 91A of the General Statutes.~~ metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of Chapter 91A of the General Statutes.

c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

(2) ~~"Local law enforcement agency" means:~~ Local law enforcement agency. – The term means the following, as applicable:

a. The county police ~~force; or~~ force, if the dealer's business is located within a county with a county police force and outside the corporate limits of a municipality.

b. ~~The county sheriff's office in a county with no county police force for any business located outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force. "Local law enforcement agency" means the municipal police for any business located within the corporate limits of a municipality having a police force.~~ The municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force.

c. The county sheriff's office of the county in which the dealer's business is located, if neither sub-subdivision a. nor b. of this subdivision applies.

(3) ~~"Precious metal" means gold,~~ Precious metal. – Gold, silver, ~~or platinum~~ platinum, or palladium, as defined below, but excluding coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.

a. ~~"Gold" is defined as any~~ Gold. – Any item or article containing ~~ten (10)~~ 10 ~~karat~~ karats of gold or more which may be in combination or alloy with any other metal.

b. ~~"Silver" is defined as any~~ Silver. – Any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal or which is marked 'sterling'.

c. ~~"Platinum" is defined as any~~ Platinum. – Any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any other metal.

d. Palladium. – Any item or article containing 950 parts per thousand or more of palladium which may be in combination or alloy with any other metal.

~~For purposes of this Article, "precious metal" does not include coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.~~"

SECTION 2. G.S. 66-165 reads as rewritten:

"**§ 66-165. ~~Permits required.~~Permits.**

(a) Dealer Permit. – Except as provided in subsection (c) of this section, it ~~shall be~~ is unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local ~~law enforcement~~ law enforcement agency. The ~~form of the permit and application therefor shall be as approved by the~~ Department of Crime Control and Public ~~Safety.~~ Safety shall approve the forms for both the application and the permit. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local ~~law enforcement~~ law enforcement agency which is used for ~~the conduction of~~ conducting a precious metals business, and each permit shall designate the location, place or premises to which it applies. ~~Such~~ No business shall ~~not~~ be conducted in ~~any other~~ a place other than that designated in the permit, ~~and no business shall be conducted~~ or in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist ~~home as defined in G.S. 105-61.~~home. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for ~~each dealer's permits~~ a permit within each jurisdiction ~~shall be ten dollars ($10.00)~~is one hundred eighty dollars ($180.00) to provide for the administrative costs of the local ~~law enforcement~~ law enforcement agency, including the purchase of required ~~forms.~~ forms and the cost of conducting the criminal history record check of the applicant. The fee ~~shall not be~~ is not refundable even if the permits are denied or later suspended or revoked. ~~Such permits shall be~~ A permit issued under this section is in addition to and not in lieu of other business licenses and ~~are~~ is not transferable. No person, other than the dealer named on the permit and that dealer's employees, may engage in the business of purchasing precious metals under the authority of the permit.

Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit shall furnish the local ~~law enforcement~~ law enforcement agency with the following information:

(1) ~~His~~ The applicant's full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five ~~years;~~years.

(2) Current address, and all addresses used by the applicant during the preceding five ~~years;~~years.

(3) Physical ~~description;~~description.

(4) ~~Age;~~Age.

(5) Driver's license number, if any, and state of ~~issuance;~~issuance.

(6) Recent ~~photograph;~~photograph.

(7) Record of felony ~~convictions;~~convictions.

(8) Record of other convictions during the preceding five ~~years; and~~years.

(9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant ~~who, within five years prior to the date of application,~~who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who ~~has, within five years prior to the date of application,~~has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Employee Requirements. – Every employee engaged in the precious metal purchasing business shall, within two business days of being so engaged, register his or her name and address with the local ~~law enforcement~~ law enforcement agency and have his or her photograph taken by the agency. The employee shall also consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to ~~him~~ the employee a certificate of compliance with this section upon the applicant's payment of the sum of ~~three dollars ($3.00)~~ten dollars ($10.00) to the agency. The ~~permit~~ certificate shall be renewed annually for a three-dollar ($3.00) fee and shall be posted in the work area of the ~~permit holder.~~registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is

involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under G.S. 66-169(a).

The Department of Justice may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the employee, any additional information required by the Department of Justice, and a form signed by the employee consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The employee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each employee a fee for conducting the checks of criminal history records authorized by this subsection.

(c) Special Occasion Permit. – A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local ~~law enforcement~~ law enforcement agency; provided, however, that a permittee under subsection (a) of this section shall apply for a special occasion permit with the local ~~law enforcement~~ law enforcement agency ~~which~~ that issued ~~such~~ the dealer's permit. ~~An application for a permit shall be on a form as approved by the~~ The Department of Crime Control and Public Safety shall approve the forms for both the application and the permit. The application ~~and~~ shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local ~~law enforcement~~ law enforcement agency for a special occasion permit shall furnish the local ~~law enforcement~~ law enforcement agency with the information required in an application for a dealer's permit as set forth in ~~(a).~~ subsection (a) of this section. In addition, the applicant shall provide a physical address where any item included in a dealer purchase will be held for the period required under G.S. 66-170. The physical address shall be the location where the purchase was made, unless another physical address within the law enforcement jurisdiction where the purchase was made is approved by the law enforcement agency that issues the permit. The items shall be available at all reasonable times for inspection on the premises by law enforcement agencies.

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant ~~who, within five years prior to the date of application,~~ who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~ state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who ~~has, within five years prior~~

~~to the date of application,~~has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state.~~state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The filing fee for ~~an application for~~ a special occasion permit application ~~shall be ten dollars ($10.00)~~ is one hundred eighty dollars ($180.00) to provide for the administrative cost of the local ~~law enforcement~~ law enforcement agency including purchase of required ~~forms.~~ forms and the cost of conducting the criminal history record check of the applicant. The fee ~~shall not be~~ is not refundable even if the permit is denied or is later suspended or revoked. ~~Such permits shall be~~ A special occasion permit is in addition to and not in lieu of other business licenses and ~~are~~ is not transferable. No person, other than the dealer named on the permit and that dealer's employees, may engage in the business of purchasing precious metals under the authority of the permit.

A special occasion permit ~~shall be~~ is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form ~~as~~ approved by the Department of Crime Control and Public Safety and shall be accompanied by ~~an application~~ a nonrefundable renewal fee of ~~ten dollars ($10.00).~~one hundred eighty dollars ($180.00). ~~A renewal fee shall not be refundable.~~

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 3. G.S. 66-166 is repealed.

SECTION 4. G.S. 66-169 reads as rewritten:

"**§ 66-169. Records to be kept.**

(a) Every dealer to whom a permit has been issued pursuant to G.S. 66-165 shall maintain ~~a tightly bound book or books (not loose leaf), with pages numbered in sequence, in which shall be recorded, at the time of any purchase of precious metal, a serially numbered account and description of the specific items purchased, including, if applicable,~~ consecutively numbered records of each precious metals transaction. Each consecutively numbered record shall be made at the time of the transaction and shall contain a clear and accurate description of the transaction. A valid description shall include each of the following applicable and available items of information: the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the ~~items,~~ items; the date of the ~~transaction,~~ transaction; ~~and~~ the name, sex, race, residence, telephone number and driver's license ~~number, if any,~~ number of the person selling the items ~~purchased. Both the dealer and the seller shall sign the record entry.~~ purchased; and the signature of both the dealer or registered employee and the seller. In the event the seller cannot furnish ~~his driver's license,~~

valid, unexpired photographic identification in the form of a drivers license, State-issued identification card, passport, or military identification ~~card bearing his photograph,~~ card, the dealer shall require two forms of positive identification.

(b) The consecutively numbered records required by this section shall be kept either (i) in a paginated, bound book or set of books with pages numbered in sequence or (ii) in an electronic database that prevents record deletion, tracks all modifications to records, and provides for electronic signatures.

(c) The ~~record book~~ records shall be open at all reasonable times to inspection on the premises by ~~law enforcement agencies~~ law enforcement agencies, and an individual record shall ~~not~~ be ~~destroyed~~ retained for at least two years after a transaction. If a dealer maintains a record book rather than an electronic database, the book shall be retained until at least two years following the last ~~transaction which the record book reflects.~~ recorded transaction.

(d) A copy of each consecutively numbered record ~~book~~ entry shall be filed within 48 hours of the transaction in the office of the local ~~law enforcement~~ law enforcement agency. ~~Mailing the required copy to the local law enforcement agency within 48 hours shall constitute compliance with this section.~~ Records shall be filed in the manner authorized by the local law enforcement agency, which may include reporting electronically by transmission over a computer network, by facsimile machine, or by hand delivering hard copies to the local law enforcement agency. In any case where a technological failure prevents a dealer from reporting electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of the record to the local law enforcement agency. Regardless of the manner in which the local law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon the request of a law enforcement agency.

(e) The files of local ~~law enforcement~~ law enforcement agencies ~~which contain such~~ that contain copies of ~~record book entries~~ records shall not be subject to inspection and examination as authorized by G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of such files, unless the person is one specifically authorized by the local ~~law enforcement~~ law enforcement agency to have access ~~thereto~~ for purposes of ~~law enforcement~~ law enforcement investigation or civil or criminal proceedings, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined up to five hundred dollars ($500.00) in the discretion of the court.~~court but not in excess of five hundred dollars ($500.00).~~

~~Every merchant to whom an exemption has been issued pursuant to G.S. 66-166 shall maintain a book in which shall be recorded, at the time of any purchase of precious metal, a description of the specific items purchased and the date of the transaction. This book shall be open at all reasonable times to inspection on the premises by law enforcement agencies and shall not be destroyed until two years following the last transaction which the record book reflects.~~"

SECTION 5. G.S. 66-170 reads as rewritten:

"**§ 66-170. Items not to be modified.**

No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any ~~such~~ item be removed from the licensed ~~premises~~ premises, or other location specified on the application for a special occasion permit, for a period of ~~five~~ seven days from the date the ~~purchase was made.~~transaction was reported in accordance with G.S. 66-169."

SECTION 6. This act becomes effective October 1, 2009. No dealer who is required to be licensed under this act, but who was not required to be licensed prior to the effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing precious metals without a license during the period between October 1, 2009, and January 1, 2010.

HOUSE BILL 1637:
Modernize Precious Metal Business Permitting

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	August 4, 2009
Introduced by:	Reps. Samuelson, Dickson	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Third Edition H1637-CSSUf-83		

SUMMARY: ***House Bill 1637 amends the provisions governing the regulation of persons engaged in the business of purchasing precious metals as follows:***

- ***Eliminates the 10% rule (exemption from licensing requirements for dealers whose second hand purchases of precious metals are less than 10% of their total purchases from the public).***
- ***Clarifies transactions that are exempt from regulation.***
- ***Exempts all pawnbroker transactions from regulation under the precious metals article.***
- ***Adds palladium as a regulated metal.***
- ***Increases the fee for a permit from $10 to $180 and increases the fee for registration of an employee from $3 to $10 with an annual renewal fee of $3.***
- ***Requires employees of dealers to consent to criminal history checks and provides that the person may not be employed by the dealer if the person refuses to consent or if the person has been convicted of a felony and has not had citizenship rights restored for at least 5 years.***
- ***Exempts employees from registration if they are only involved in precious metals purchases incidentally to other job responsibilities and the transactions are overseen by a registered employee or licensed dealer.***
- ***Requires a dealer who applies for a special occasion permit to provide a physical address where purchased items are to be kept for the required hold period.***
- ***Allows dealers to keep records electronically, but reporting would be in the manner authorized by the law enforcement agency.***
- ***Provides that purchased items may not be sold or disposed of for a period of 7 days after a transaction is reported.***

CURENT LAW: Article 25 of Chapter 66 of the General Statutes provides for the regulation of persons who engage in the business of purchasing precious metals (gold, silver, and platinum) from the public. "Precious metals" do not include coins, medals, tokens, or art ingots. A dealer must obtain a permit from the local law enforcement agency and is required to keep records of all transactions to be submitted to the law enforcement agency on an ongoing basis. Those requirements do not apply to a merchant whose purchases of precious metals from the public are 10% or less of the merchant's total purchases of secondhand items. Also exempt from regulation under this Article are purchases made directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories, and pawns or pledges of items made of precious metals made to pawnbrokers under Chapter 91A.

BILL ANALYSIS: House Bill 1637 would amend Article 25 of Chapter 66 of the General Statutes in the following ways:

Eliminate 10% rule. Under current law, a dealer may apply for an exemption from licensure requirements if the dealer's purchases of precious metals from the public are 10% or less of the dealer's total purchases of secondhand items. The dealer is required to apply for the exemption with the law enforcement agency each year. In any month that purchases exceed 10%, the dealer is required to file notice with the law enforcement agency. In practice, there seems to be confusion on the part of dealers and law enforcement about this exemption. The bill would eliminate the exemption, so that all dealers would be subject to licensing requirements.

Clarify exempt transactions. Under the current law, the following transactions are exempt from regulation:

- Purchases made by permanently located retail merchants directly from manufacturers or wholesalers of precious metals for their inventories.
- Pawns or pledges of items made of precious metals under the provisions of Chapter 91A (regulation of pawnbrokers). Purchases by pawnbrokers are not exempt, which causes overlap of the precious metal dealer and pawnbroker statutes, which include similar record keeping and hold provisions.

The bill would reorganize and clarify the statute and specifically list the following as "exempt transactions":

- Purchases made by permanently located retail merchants directly from manufacturers or wholesalers of precious metals for their inventories.
- Pawns, pledges, *and purchases* of items made of precious metals if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under Chapter 91A (this would eliminate the overlap for pawnbrokers and take them out of the precious metals article entirely).
- Trades of precious metals entered into by permanently located retail merchants where money is not paid for the item.

Palladium. Article 25 currently regulates purchases of gold, silver, and platinum. The PCS would add palladium as a precious metal regulated under those provisions. Palladium would be defined as any item or article containing 950 parts per thousand or more of palladium which may be in combination with any other metal.

Fee increase. Under current law, the annual fee for a precious metals dealer permit is $10. The PCS would increase the annual permit fee for dealers to $180 and provides that the fee includes the cost of the background check of the dealer and special occasion applicant. An employee of a dealer is required to register his or her name and address with the local law enforcement agency within 2 days of being employed and pay a fee of $3. The bill would increase the registration fee to $10 with an annual renewal fee of $3.

Physical address required for special occasion permit. Under current law, a dealer can apply for a special occasion permit, which allows the dealer to make purchases in various locations in the state that are not permanent. This makes it difficult or impossible for the dealer to comply with the required hold period. The PCS would require an applicant for a special occasion permit to provide a physical address where the items are purchased for purposes of satisfying the required hold period. The address would

have to be the location where the item was purchased or another address within the same law enforcement jurisdiction, if a separate location is approved by the agency issuing the permit. The dealer would also be required to make the items available for inspection by law enforcement at all reasonable times.

Criminal history checks for employees. Under current law, an applicant for a dealer permit is required to undergo a criminal record check and may not be issued a permit if the applicant has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar charges within the previous 5 years. Employees of dealers are required to register with the local law enforcement agency but are not required to undergo criminal background checks. The bill would require employees to consent to criminal background checks. If the person refuses the check or has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar charges, and the person's citizenship rights have not been restored for at least 5 years prior to registering, then the person may not be employed by a licensed dealer. The bill would provide that an employee who is only engaged in precious metals purchasing incidentally to other job responsibilities would not be required to register and undergo a background check as long as any transaction the employee is involved with is overseen by a registered employee or licensed dealer. The bill also amends the requirements for licensees with regard to felony convictions, providing that they must also have had citizenship rights restored at least 5 years prior to application.

Records of transactions maintained electronically. Precious metal dealers are required to maintain records of all transactions, including the manufacturer's name, the model, model number, serial number, and engraved numbers or initials on the item; the date of the transaction; the name, sex, residence, phone number, and drivers license number of the seller; and the signatures of the dealer and seller. Under current law, a dealer's records of transactions must be maintained in record books, and a copy of each record book entry must be filed in the office of the local law enforcement agency within 48 hours of a transaction. The bill would allow the dealers to maintain records of transactions electronically in a database that prevents record deletion, tracks modifications, and allows for electronic signatures. It would also provide that the law enforcement agency may determine the manner of reporting required by the dealer (either electronic, by fax, or hand delivery), but the agency must allow the dealer to hand deliver a hard copy if a technological failure prevents reporting electronically or by fax.. The dealer would also still be required to provide hard copies of records upon request of the agency.

Time restriction on selling or disposing of purchased items. When a dealer purchases an item, current law prohibits the dealer from selling or otherwise disposing of the item for a period of 5 days following the date of purchase. The bill would amend the law to prohibit the dealer from selling or otherwise disposing of the item for a period of 7 days after the record of the transaction is reported.

EFFECTIVE DATE: The bill would become effective October 1, 2009. However, a dealer that is required by the act to be licensed, and who is not required under the current law to be licensed, would not be guilty of engaging in the precious metals business without a license until January 1, 2010. This grace period is provided because there is a 30-day waiting period for issuance of a permit.

H1637-SMSU-148(CSSUf-83) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1151
Committee Substitute Favorable 7/15/09
Third Edition Engrossed 7/28/09

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 target 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 target 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 target 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 target 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:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	August 3, 2009
Introduced by:	Reps. Farmer-Butterfield, Earle, England, Rapp	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	Third Edition		

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; authorizes reciprocity for training courses accredited by the EPA; and establishes the penalty for a violation of Article 19B at up 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 to be used for the administration of the Article as follows:

- $150.00 for accreditation or reaccreditation of a training provider.
- $2,000.00 for accreditation or reaccreditation of initial or refresher courses (per course per language).
- $300.00 for certification or recertification of a firm.
- $150.00 for certification or recertification of a dust sampling technician.

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-153(e3) v1

SENATE COMMERCE COMMITTEE
Tuesday, August 4, 2009
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met immediately after the adjournment of the Session on August 4, 2009, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R.C. Soles presided.

H.B. 212 – Health Insurance Pool Pilot Program.

Senator Rucho moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. Senator Nesbitt was recognized to explain the PCS. It authorizes the establishment of one health insurance demonstration project to provide a model for affordable employer-based health insurance; recognizes credentialed health care providers of the State Health Plan and other existing managed care plans for rapid demonstration project provider network development; and assures network providers' continued participation in the State Health Plan and other managed care plans, while participating in the demonstration project network. Senator Blue moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

The meeting adjourned at 5:50 p.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, August 04, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **212** Health Insurance Pool Pilot Program.

Draft Number:	50785
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
H212 – Sen. Nesbitt

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	August 4, 2009	Immediately after Session	1027 LB

The following will be considered:

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

Senator R. C. Soles, Jr., Chair

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 4, 2009 pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
CHRIS BROOKS	OOJ/OMV
DAVID BARNES	Poyner Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 4, 2009 pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jean Holliday	NCDOT
Kelli Kucera	NCLM
Cam Cruz	BPMHL
Damon Circosta	NC Voter Ed
	JD ACPA
Scott Sexton	WCSR
Fred Baraket	
Bill Scoggin	KLG
Emily Johnson	Bill Drafting

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 212
Committee Substitute Favorable 3/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H212-CSRD-83 [v.3]

8/4/2009 2:38:05 PM

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 ONE HEALTH INSURANCE PILOT DEMONSTRATION PROJECT TO PROVIDE A MODEL FOR AFFORDABLE EMPLOYER-BASED HEALTH INSURANCE; TO RECOGNIZE CREDENTIALED HEALTH CARE PROVIDERS OF THE STATE HEALTH PLAN AND OTHER EXISTING MANAGED CARE PLANS FOR RAPID DEMONSTRATION PROJECT PROVIDER NETWORK DEVELOPMENT; AND TO ASSURE NETWORK PROVIDERS' CONTINUED PARTICIPATION IN THE STATE HEALTH PLAN AND OTHER MANAGED CARE PLANS, WHILE PARTICIPATING IN THE DEMONSTRATION PROJECT NETWORK.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law to the contrary, a single health insurance demonstration project (Demonstration Project) for both large and small employers may be established in the State. The Demonstration Project, 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 area, shall begin offering coverage not later than December 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, subsection (e) of G.S. 58-65-60, or subsection (a) of G.S. 58-67-85, to issue a policy of group health insurance are eligible to be the Demonstration Project Sponsor. The Demonstration Project authorized under this act shall 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 large and 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.

(5) Notwithstanding subsection (2) of Section 3 of this act, any plan offered to eligible employers shall provide for coverage that equals or exceeds the coverage in the standard health care plan, as defined in G.S. 58-50-110(24).

SECTION 2. Any employer that participates in the Demonstration Project and is either (i) a health care provider or pharmacy regulated under Chapter 90 of the General Statutes, or (ii) a health service facility regulated under Chapter 131E of the General Statutes, shall comply with the following:

(1) If the employer by contract, either directly with an insurer licensed under Chapter 58 of the General Statutes, with the State Health Plan for Teachers and State Employees (State Health Plan) or its Third Party Administrator (TPA), or through an independent provider network contracted with those entities, has been credentialed by and provides health care services to members of managed health care plans of those entities, the employer may, subject to the Demonstration Project insurer's health care provider contractual provisions and fee schedules, participate in any provider network without being re-credentialed by the Demonstration Project's insurer.

(2) If the employer by contract, either directly with an insurer licensed under Chapter 58 of the General Statutes, with the State Health or its TPA, or through an independent provider network, is contracted with any of those entities for provision of health care services to their members, and any such contract with any of those entities terminates subsequent to the employer becoming a Demonstration Project participating employer, the participating employer shall for the duration of the Demonstration Project continue to honor the contracted rates for any covered services provided to those health plan members affected by the termination.

SECTION 3. The 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 4. The premium rates charged to individuals covered under employers participating in the group master contract shall be based on a community rate that reflects the experience of all the employers participating in the pool and are not subject to G.S. 58-50-130(b). The 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 5. 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. The Department may not approve the establishment of the large risk pool authorized in this act if Department review indicates that the pool would fail to comply with any of the applicable requirements of Chapter 58 of the General Statutes.

SECTION 6.(a) The Demonstration Project Sponsor shall prepare an evaluation of the Demonstration Project. A report on this 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 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 shall evaluate the Demonstration Project authority, taking into account the impact that the Demonstration Project has 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 Sponsor may submit interim reports to the Joint Legislative Health Care Oversight Committee. If the Commissioner of Insurance determines that the 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 the Demonstration Project or the Demonstration Project authority to the Joint Legislative Health Care Oversight Committee.

SECTION 6.(b) The evaluation performed by the Department of Insurance shall analyze the impact that the Demonstration Project has 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 Project has 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 6.(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 the 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 6.(d) The evaluation performed by the 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 7. This act is effective when it becomes law and expires December 31, 2014.

HOUSE BILL 212:
Health Insurance Pool Pilot Program

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	August 4, 2009
Introduced by:	Reps. Goforth, Fisher, Rapp, Whilden	**Prepared by:**	Ben Popkin
Analysis of:	PCS to Second Edition H212-CSRD-83		Committee Counsel

SUMMARY: The Proposed Committee Substitute to House Bill 212 would authorize the creation and operation of a health insurance demonstration project 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 project on the cost and availability of health insurance in the project areas and the State as a whole.

The PCS provides that one demonstration project may be developed and implemented under this act, requires that coverage be offered no later than December 1, 2010, requires that benefit plans offered under the project must meet or exceed the coverage currently offered by the 'standard health care plan' under the Small Employer Group Health Coverage Act, adds a new section that 1) allows providers currently credentialed by a network to join the project network without requiring re-credentialing, and 2) requires providers currently in the State Health Plan or other provider networks to continue to treat plan members at contracted rates if they terminate their contract with the network after joining the project network, for the duration of the project, and prohibits the Department from approving creation of a risk pool for the project, if it would be out of compliance with any applicable requirements of Chapter 58.

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 a single demonstration project 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 a demonstration project sponsor, and the project must begin offering coverage by December 1, 2010 and operate no later than December 31, 2014.

The demonstration project must allow all eligible employers to join the project pool, and all eligible interested employees of participating employers must be included in the pool. The demonstration project must offer the same benefit plans to all employers and employees in the pool and the plans offered must provide coverage that equals or exceeds coverage in the 'standard health care plan' in the Small Employer Group Heath Coverage Reform Act (Part 5 of Article 50 of Chapter 58).

Section 2 – (1) Would allow providers currently credentialed as part of the State Health Plan or any other managed care plan network to join the project network without having to be re-credentialed (to speed network development). (2) Would require that any provider currently on the State Health Plan or other provider network who terminates their contract with the network must continue to provide covered services at the contracted rates to plan members who would be affected by the termination, for the duration of the demonstration project.

Section 3 – Would allow the demonstration project 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 4 – Would require that premium rates charged to participants in the demonstration project be based on a community rate for all employers participating in the project pool, and would exempt these premium rates from the rating provision of the Small Employer Group Health Coverage Reform Act. Adjustments to premium rates may be allowed only for the following factors: benefit plan option chosen, family composition, age, and gender.

Section 5 – 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. An added provision prohibits the Department from approving a pool that would be out of compliance with any applicable requirement of Chapter 58 of the General Statutes.

Section 6(a) – Would direct the demonstration project sponsor to evaluate the 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 sponsor and would authorize the Commissioner to recommend early termination of the project if continuation would not be in the public's interest.

Section 6(b) – Would specify that the Department's report would include analysis of the impact of the project 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 6(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 6(d) – Would identify specific issues to be addressed in the project sponsor's evaluation (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-197(CSRD-83) v1

SENATE COMMERCE COMMITTEE
Wednesday, August 5, 2009 at 10:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 10:00 AM on August 5, 2009, in Room 1027 of the Legislative Building. Twenty-four members of the committee were present. Senator R.C. Soles presided. Matt Smith and Rowland Yeargan of Willow Springs, Sawyer Walters and Sloan Walters of Lexington, and Joey Surles of Fuquay-Varina served as pages.

H.B. 1305 – Beach Plan Changes.

Representative Holliman was recognized to explain the bill. Senator Blue moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The PCS makes changes to the coastal property insurance pool, presently known as the beach plan, as recommended by the Joint Select Study Committee on the Potential Impact of Major Hurricanes on the North Carolina Insurance Industry. It requires that the North Carolina Rate Bureau provide public notice of certain filings in newspaper publications and via internet; reaffirms that the North Carolina Insurance Underwriting Association is intended to be exempt from State and federal taxation, except from premium taxes; clarifies the power and duties of the Association; clarifies and provides certainty regarding assessments against member insurance companies by the Association; adjusts the coverage limits of the Association in order to ensure that the coastal property insurance pool is the market of last resort; mandates that the Association shall retain all surplus for use in purchasing reinsurance, paying claims to policy holders, and for Association obligations; prohibits distribution of surplus to member insurance companies; requires the Association and the rate bureau to file a schedule of premium credits for policyholders who have voluntarily mitigated their risk of damage; requires the Association to establish and maintain an installment plan for premium payments for the ease of policy holders; defines and establishes what actions are allowed upon the occurrence of a deficit event, including capping any catastrophe recovery charge from homeowners statewide; requires that association activities be made transparent and available; provide for succession and dissolution of the Association; provides for surcharges of five percent for separate wind and hail coverage, fifteen percent for wind and hail homeowners coverage, and a minimum named storm wind and hail deductible of one percent for coverage written by the Association; provides for surcharges on commercial and dwelling coverage in addition to surcharges currently imposed on homeowners policies; and makes other changes. Tim Hovis, staff attorney with the Research Division, was recognized for a brief explanation. Rose Vaughan Williams, Department of Insurance's legislative counsel, and John McMillan, representing the Insurance Federation of North Carolina, were recognized to speak in favor of the bill and answer questions. John Bodie, representing the Independent Insurance Agents, was recognized to speak in favor of the bill. Senator Rand offered a technical amendment and moved for its adoption, the motion carried. Senator Rand offered a second technical amendment, which Rose Vaughan Williams was recognized to explain. Senator Rand moved for the adoption of the amendment and the motion carried. Senator Doug Berger moved for a favorable report and the motion carried. A copy of the PCS, the summary, and the two amendments is attached.

The meeting adjourned at 10:30 a.m.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Sen Blue moves to adopt PCS for discussion
Rep. Holliman recd to explain
Tim Harris, recd to give briefing

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

Rose Vaughn Williams, Dept of Ins., to speak in favor of the bill

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HOUSE BILL 1305
Committee Substitute Favorable 7/1/09
Committee Substitute #2 Favorable 7/13/09

John McMillan

PROPOSED SENATE COMMITTEE SUBSTITUTE H1305-CSRG-52 [v.8]
Insurance Federation of NC, spoke in favor & answered ?'s
8/4/2009 7:42:49 PM

John Bodie, Independent Insurance Agents spoke in favor

Short Title: Beach Plan Changes. (Public)

Sponsors:

Referred to:

D. Berger moves
Rand offers 1st tech amend & moves for adoption - favorable
April 9, 2009
Rand offers 2nd amend. Rose Williams explained

A BILL TO BE ENTITLED - favorably

AN ACT TO MAKE CHANGES TO THE COASTAL PROPERTY INSURANCE POOL, PRESENTLY KNOWN AS THE BEACH PLAN, AS RECOMMENDED BY THE JOINT SELECT STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR HURRICANES ON THE NORTH CAROLINA INSURANCE INDUSTRY; REQUIRE THAT THE NORTH CAROLINA RATE BUREAU PROVIDE PUBLIC NOTICE OF CERTAIN FILINGS IN NEWSPAPER PUBLICATIONS AND VIA INTERNET; REAFFIRM THAT THE NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION IS INTENDED TO BE EXEMPT FROM STATE AND FEDERAL TAXATION, EXCEPT FOR PREMIUM TAXES; CLARIFY THE POWERS AND DUTIES OF THE ASSOCIATION; CLARIFY AND PROVIDE CERTAINTY REGARDING ASSESSMENTS AGAINST MEMBER INSURANCE COMPANIES BY THE ASSOCIATION; ADJUST THE COVERAGE LIMITS OF THE ASSOCIATION IN ORDER TO ENSURE THAT THE COASTAL PROPERTY INSURANCE POOL IS THE MARKET OF LAST RESORT; MANDATE THAT THE ASSOCIATION SHALL RETAIN ALL SURPLUS FOR USE IN PURCHASING REINSURANCE, PAYING CLAIMS TO POLICYHOLDERS, AND FOR ASSOCIATION OBLIGATIONS; PROHIBIT DISTRIBUTION OF SURPLUS TO MEMBER INSURANCE COMPANIES; REQUIRE THE ASSOCIATION AND THE RATE BUREAU TO FILE A SCHEDULE OF PREMIUM CREDITS FOR POLICYHOLDERS WHO HAVE VOLUNTARILY MITIGATED THEIR RISK OF DAMAGE; REQUIRE THE ASSOCIATION TO ESTABLISH AND MAINTAIN AN INSTALLMENT PLAN FOR PREMIUM PAYMENTS FOR THE EASE OF POLICYHOLDERS; DEFINE AND ESTABLISH WHAT ACTIONS ARE ALLOWED UPON THE OCCURRENCE OF A DEFICIT EVENT, INCLUDING CAPPING ANY CATASTROPHE RECOVERY CHARGE FROM HOMEOWNERS STATEWIDE; REQUIRE THAT ASSOCIATION ACTIVITIES BE MADE TRANSPARENT AND AVAILABLE; PROVIDE FOR SUCCESSION AND DISSOLUTION OF THE ASSOCIATION; PROVIDE FOR SURCHARGES OF FIVE PERCENT FOR SEPARATE WIND AND HAIL COVERAGE, FIFTEEN PERCENT FOR WIND AND HAIL HOMEOWNERS COVERAGE, AND A MINIMUM NAMED STORM WIND AND HAIL DEDUCTIBLE OF ONE PERCENT FOR COVERAGE WRITTEN BY THE ASSOCIATION; PROVIDE FOR SURCHARGES ON

COMMERCIAL AND DWELLING COVERAGE IN ADDITION TO SURCHARGES CURRENTLY IMPOSED ON HOMEOWNERS POLICIES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45 of Chapter 58 of the General Statutes reads as rewritten:

"Article 45.

"Essential Property Insurance for Beach Area Property.

"§ 58-45-1. Declarations and purpose of Article.

(a) It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of those areas would be severely impeded; that furthermore, adequate insurance upon property in the beach and coastal areas is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach and coastal areas of North Carolina.

(b) The General Assembly further declares that it is its intent in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort.

(c) It is the intent of the General Assembly that except for North Carolina gross premium taxes and the fire and lightning tax, the activities of the Association be exempt from State and federal taxation to the fullest extent permitted by law.

"§ 58-45-5. Definition of terms.

As used in this Article, unless the context clearly otherwise requires:

(1) ~~"Association" means~~Association. – ~~the~~ The North Carolina Insurance Underwriting Association established under this ~~Article;~~Article.

(2) ~~"Beach area" means~~ Beach area. – ~~all~~ All of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer ~~Banks;~~Banks.

(2a) ~~"Coastal area" means~~Coastal area. – ~~all~~ All of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. "Coastal area" does not include the portions of these counties that lie within the beach area.

(2b) Catastrophe recovery charge. – Any charge collected by member insurers from policyholders statewide, including any charge collected by the Association and Fair Plan from their policyholders, upon issuance or renewal of residential and commercial property insurance policies, other than National Flood Insurance policies, after a deficit event has occurred as provided in G.S. 58-45-47. The amount of the catastrophe recovery charge collected in a particular year shall not exceed an aggregate amount of ten

percent (10%) of policy premium. The catastrophe recovery charge shall be limited to the recovery of losses resulting from claims for property damage, allocated loss expenses, and actual costs and expenses directly resulting from the catastrophe recovery charge plan.

(2c) Coastal Property Insurance Pool. – The name of which was formerly known as "the Beach Plan" and which is governed by the North Carolina Insurance Underwriting Association. All references to the "Beach Plan" shall mean the Coastal Property Insurance Pool, which is the market of last resort provided by the Association to the Beach area and the Coastal area.

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) ~~"Crime insurance" means~~Crime insurance. – ~~insurance~~ Insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.

(3b) ~~"Directors" means~~Directors. – ~~the~~ The Board of Directors of the Association.

(4) ~~"Essential property insurance" means~~Essential property insurance. – ~~insurance~~ Insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the ~~Commissioner;~~Commissioner.

(5) ~~"Insurable property" means~~ Insurable property. – ~~real~~ Real property at fixed locations in the beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor vehicles; which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is

built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.

(6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.

(6a) ~~"Net direct premiums" means~~Net direct premiums. – ~~gross~~ Gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, farm owners insurance, homeowners insurance, and the property portion of commercial multiple peril insurance policies as computed by the Commissioner, less:

a. Return premiums on uncancelled contracts;

b. Dividends paid or credited to policyholders; and

c. The unused or unabsorbed portion of premium deposits.

(6b) Named storm. – A weather-related event involving wind that has been assigned a formal name by the National Hurricane Center, National Weather Service, World Meteorological Association, or any other generally recognized scientific or meteorological association that provides formal names for public use and reference. A named storm includes hurricanes, tropical depressions, and tropical storms.

(6c) Nonrecoupable assessment. – Any assessment levied on and payable by members of the Association that is not directly recoverable from policyholders. Prospective exposure to nonrecoupable assessments shall be considered as an appropriate factor in the making of rates by the North Carolina Rate Bureau.

(7) ~~"Plan of operation" or "plan" means~~Plan of operation. – ~~the~~ The plan of operation of the Association approved or promulgated by the Commissioner under this Article.

(8) Voluntary market. – Insurance written voluntarily by companies other than through this Article or Article 46 of this Chapter.

(9) Voluntary market rates. – Property insurance rates determined or permitted under Article 36, 40, or 41 of this Chapter.

"§ 58-45-6. Persons who can be insured by the Association.

As used in this Article, "person" includes the State of North Carolina and any county, city, or other political subdivision of the State of North Carolina.

"§ 58-45-10. North Carolina Insurance Underwriting Association created.

There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, essential property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b and except an insurer who only writes insurance in this State on property exempted from taxation by the provisions of G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State.

"**§ 58-45-15. Powers and duties of Association.**

The Association shall, pursuant to the provisions of this Article and the plan of operation, and with respect to the insurance coverages authorized in this Article, have the power on behalf of its members:

(1) To cause to be issued policies of insurance to ~~applicants;~~applicants.

(2) To assume reinsurance from its ~~members;~~members.

(3) To cede reinsurance to its members and to purchase reinsurance in behalf of its ~~members.~~members.

(4) To pledge the proceeds of assessments, projected reinsurance recoveries, other recoverables, and any other funds available to the Association as the source of revenue for and to secure lines of credit or other borrowings or financing arrangements necessary to fund any actual, projected, or future deficits of the Association, including borrowing from member companies.

(5) To publish in the North Carolina Register all homeowners' rate filings with the Department of Insurance.

"**§ 58-45-20. Temporary directors of Association.**

Within 10 days after April 17, 1969, the Commissioner shall appoint a temporary board of directors of this Association, which shall consist of 11 representatives of members of the Association. Such temporary board of directors shall prepare and submit a plan of operation in accordance with G.S. 58-45-30 and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

"**§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. ~~its expenses, profits, and losses.~~**

(a) Subject to the limitations contained in G.S. 58-45-47, ~~Each~~ each member of the Association shall participate in the ~~expenses, profits, and losses of~~nonrecoupable assessments levied by the Association in the proportion that its net direct premium written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

(b) All member companies shall receive credit each year for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas in accordance with guidelines and procedures to be submitted by the Directors to the Commissioner for approval. Such credits shall also apply to any nonrecoupable assessments levied pursuant to G.S. 58-45-47. The participation of each member company in the ~~expenses, profits, and losses of~~ nonrecoupable assessments levied by the Association shall be reduced accordingly; provided, no credit shall be given where coverage for the peril of wind has been excluded. The guidelines and procedures for granting credit shall encourage and assist each member company to voluntarily write these coverages in the beach and coastal areas for commercial and residential properties.

(b1) The accumulated surplus of the Association shall be retained from year to year and used to pay losses, reinsurance costs, and other operating expenses as necessary. No member

company shall be entitled to the distribution of any portion of the Association's surplus, except pursuant to judgments entered prior to the effective date of this law.

(b2) The premiums, surplus, assessments, investment income, and other revenue of the Association are funds received for the sole purpose of providing insurance coverage, paying claims for Association policyholders, purchasing reinsurance, securing and repaying debt obligations issued by the Association, and conducting all other activities of the Association, as required or permitted by this Article. Accumulated surplus shall not be removed from the Association or used for other purposes except pursuant to contractual obligations incurred by the Association prior to the effective date of this law.

(c) The North Carolina Insurance Underwriting Association shall use the "take out" program, as filed with and approved by the Commissioner, in the coastal area.

"§ 58-45-30. Directors to submit plan of operation to Commissioner; review and approval; ~~amendments.~~amendments; appeal from Commissioner to superior court.

(a) The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance, farmowners, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach and coastal areas of North Carolina to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in those areas. The plan may include the establishment of necessary facilities; management of the Association; the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance; and any other provisions that are considered necessary by the Commissioner to carry out the purposes of this Article.

(b) The proposed plan and any amendments thereto shall be filed with ~~reviewed by~~ the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within 30 days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a plan that meets the requirements of this Article ~~a proposed plan of operation within 90 days of April 17, 1969, or a new plan which is acceptable to the Commissioner,~~ or accept the recommendations of the Commissioner within 30 days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation that meets the requirements of this Article certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect 10 days after certification to the ~~directors:~~ directors. ~~Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this Article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.~~

(c) The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time the Commissioner deems expedient or prudent, but not less than once in each calendar year. After review of the plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of the amendment. Any order of the Commissioner with respect to the proposed plan of operation or any amendments thereto shall be subject to review upon petition by the Association as provided by G.S. 58-2-75.

(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. Homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas who meet the Association's underwriting standards and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The Association shall file for approval by the Commissioner underwriting standards to determine whether property is insurable. The standards shall reflect underwriting standards commonly used in the voluntary homeowners' insurance business. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties.

(e) The Association shall, subject to the Commissioner's approval or modification, provide in the plan of operation for coverage for appropriate classes of manufacturing risks.

(f) As used in this section, "plan of operation" includes all written rules, practices, and procedures of the Association, except for staffing and personnel matters.

"**§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. A broker or agent authorized by the applicant may apply on the applicant's behalf. Each application shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for essential property insurance on the property.

The term "insurable interest" as used in this subsection shall include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property.

(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy.

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an

application within the time prescribed in the plan of operation, the applicant may appeal to the Commissioner and the Commissioner, or the Commissioner's designee from the Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under this section, the Commissioner may request, and the Association shall provide, any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under Article 33 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association. The foregoing notwithstanding, an agent of a company which is a member of the Association shall have the authority, subject to the underwriting guidelines established by the Association, to temporarily bind coverage with the Association. The Association shall establish rules and procedures, including any limitations for binding authority, in the plan of operation.

Any unearned premium on the temporary binder shall be returned to the policyholder if the Association refuses to issue a policy. Nothing in this section shall prevent the Association from suspending binding authority in accordance with its plan of operation.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for the Commissioner's approval before they may be used. Catastrophic losses, as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. The Association shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting windstorm and hail losses.

"**§ 58-45-36. Temporary contracts of insurance.**

Consistent with G.S. 58-45-35(d), the Association shall be temporarily bound by a written temporary binder of insurance issued by any duly licensed insurance agent or broker. Coverage shall be effective upon payment to the agent or broker of the entire premium or part of the premium, as prescribed by the Association's plan of operation. Nothing in this section shall impair or restrict the rights of the Association under G.S. 58-45-35(b) to decline to issue a policy based upon a lack of insurability as determined by the Association or the existence of an unpaid premium due from the applicant.

"**§ 58-45-40. Association members may cede insurance to Association.**

Any member of the Association may cede to the Association essential property insurance written on insurable property, to the extent, if any, and on the terms and conditions set forth in the plan of operation.

"**§ 58-45-41. Coverage limits.**

(a) The Association shall cause to be issued insurance up to the reasonable value of the insurable property, subject to a maximum of one millions dollars ($1,000,000) on habitational property. The above limits on habitational property shall apply to the value of the building only. Insurance issued by the Association for commercial property shall not exceed three million dollars ($3,000,000) on any freestanding structure or any building unit within multiple firewall divisions, provided the aggregate insurance on structures with multiple firewall divisions shall not exceed six million dollars ($6,000,000) on all interest at one risk.

(b) Contents of habitational property can be insured up to forty percent (40%) of the building value. The Association shall ensure that rates accurately reflect the maximum limits for contents coverage and any reduction in contents coverage limits for habitational property.

(c) If the value of the property exceeds the maximum coverage limits as described in this section, the Association shall not issue coverage without the insured's purchase of excess coverage to the full value of the property insured.

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory. Except as provided in ~~subsection (b)~~ subsections (a1), (a2), and (b) of this section, ~~the~~ rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach and coastal areas.

(a1) Effective January 1, 2010, the Association's rates shall be the North Carolina Rate Bureau Manual Rates plus a surcharge of five percent (5%) of the applicable North Carolina Rate Bureau Manual Rate for wind and hail coverage and a surcharge of fifteen percent (15%) of the applicable North Carolina Rate Bureau Manual Rate for homeowners' insurance including wind and hail coverage. It is the intent of the General Assembly that these surcharges ensure that the Coastal Property Insurance Pool is the market of last resort over and above the manual rate.

(a2) The Association shall offer a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property for all policies and may offer any other deductible options provided by the North Carolina Rate Bureau, so long as the deductible is not lower than one percent (1%) of the insured value of the property applicable to named storm wind and hail losses.

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Notwithstanding subsection (a) of this section, the Association may, subject to the prior approval of the Commissioner, adopt a schedule of special surcharges above corresponding manual rates and the rates set out in subsection (a1) of this section relating to ~~homeowners' insurance~~ homeowners', dwelling, and commercial policies issued by the ~~Association pursuant to G.S. 58-45-30(d).~~ Association, including coverage for separate policies of windstorm and hail written by the Association pursuant to G.S. 58-45-35(b) and (e) in conjunction with policies written pursuant to Article 36 of this Chapter. Such schedule may reflect any differences in risk that can be demonstrated to have a probable effect on losses or expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of G.S. 58-36-10(1), 36-15(a), 58-36-20, and 58-36-25 shall apply to such filings.

(d) When the Association files rates, classification plans, rating plans, rating systems, or surcharges, the procedures of G.S. 58-40-25 through G.S. 58-40-45 shall apply, and the appeal procedures of G.S. 58-2-80 and G.S. 58-2-85 shall apply to filings under this section, except as otherwise provided.

(e) The Association shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures. The Association shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Association

annually, with the results included as part of the Association's annual report to the Commissioner.

(f) The Association shall file not later than May 1, 2010, with the Commissioner an installment plan for premium payments and shall accept other methods of payment that are the same as those filed by the North Carolina Rate Bureau. The Association shall collect an installment fee if premiums are paid other than on an annual basis.

(g) The Association shall consider the purchase of reinsurance each calendar in order to maintain the ability to pay losses and expenses from a named storm or combination of named storms.

"**§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

The Association shall make provisions for reserving unearned premiums and reserving for losses, including incurred but not reported losses, and loss expenses, in accordance with G.S. 58-3-71, 58-3-75, and 58-3-81.

"**§ 58-45-47. Deficit event.**

(a) In the event of losses and expenses to the Association exceeding available surplus, reinsurance, and other sources of funding of Association losses, the Association is authorized to issue an assessment upon its members in accordance with its Plan of Operation. Member assessments shall not exceed one billion dollars ($1,000,000,000) for losses incurred from any event or series of events that occur in a given calendar year, regardless of when such assessments are actually levied on or collected from member companies.

(b) When the Association knows that it has incurred losses and loss expenses in a particular calendar that will exceed the combination of available surplus, reinsurance, and other sources of funding, including permissible member company assessments, then the Association shall immediately give notice to the Commissioner that a deficit event has occurred.

(c) Upon a determination by the Association that a deficit event has occurred, the Association shall determine, in its discretion, the appropriate means of financing the deficit, which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit, or other forms of borrowing or financing. If the Association determines that the member companies have paid one billion dollars ($1,000,000,000) in assessments for losses and expenses incurred in any given year pursuant to subsection (a) of this section, the Association may, subject to the verification by the Commissioner that the dollar value of losses and expenses has reached the level necessary for a catastrophe recovery charge, authorize member companies to impose a catastrophe recovery charge on their residential and commercial property insurance policyholders statewide. Catastrophe recovery charges shall be charged as a uniform percentage of written premiums as prescribed by the Commissioner and shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one policy of insurance. Catastrophe recovery charges collected under this section shall be transferred directly to the Association on a periodic basis as determined by the Association and ordered by the Commissioner. The Association and the FAIR Plan shall also charge their policyholders a catastrophe recovery charge as provided in this section.

(d) The catastrophe recovery charge shall be clearly identified to policyholders on the premium statement, declarations page, or by other appropriate electronic or written method. The identification shall refer to the post-catastrophe loss for which the charge was imposed. Any such catastrophe recovery charge shall not be considered premium for any purpose, including premium taxes or commissions, except that failure to pay the catastrophe recovery charge shall be treated as failure to pay premium and shall be grounds for termination of insurance. The identified catastrophe recovery charge shall be accompanied by an explanation of the charge and shall appear on the medium by which the charge is conveyed to the policyholder. The explanatory language shall be prescribed by the Commissioner.

(e) The Association shall report quarterly to the Commissioner providing all financial information for each catastrophe recovery charge authorized by this section, including total

catastrophe recovery charge funds recovered to date and any information reasonably requested by the Commissioner.

(f) The Association shall recalculate the catastrophe recovery charge amount annually and, subject to procedure approved by the Commissioner, adjust the charge percentage as needed.

(g) The catastrophe recovery charge amount shall continue until financing of the deficit event has been paid in full. Upon order of cessation, any catastrophe recovery charge amounts collected by member companies, the Association or the FAIR Plan that exceed amounts necessary for payment of the debt shall be remitted to the Association and added to the surplus for the purposes of offsetting future Association losses or expenses.

(h) Nothing contained in this section prohibits the Association from entering into any financing arrangements for the purpose of financing a deficit, provided that the pledge of catastrophe recovery charge amounts under such financing agreements shall not result in the actual levying of any catastrophe recovery charge until after the Association has incurred a deficit and until after the Commissioner has approved implementation of the Association's catastrophe recovery charge plan.

"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

(a) Any person or any insurer who may be aggrieved by an act, ruling, or decision of the Association other than an act, ruling, or decision relating to (i) the cause or amount of a claimed loss or (ii) the reasonableness of expenses incurred by an insurer in adjusting windstorm and hail losses, may, within 30 days after the ruling, appeal to the Commissioner. Any hearings held by the Commissioner under the appeal shall be in accordance with rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of the Commissioner's staff as deputy commissioner for the purpose of hearing those appeals and a ruling based upon the hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as is provided in G.S. 58-2-75.

(b) No later than 10 days before each hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence that the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence that the appellee intends to offer at the hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an insurer and the Association, the cost of the recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. If the matter is between an insured and the Association, the cost of transcribing shall be borne equally by the appellant and appellee; provided that the Commissioner may order the Association to pay recording or transcribing costs for which the insured is financially unable to pay. Each party shall, on a date determined by the Commissioner or the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the designated hearing officer and serve on the other party, a proposed order. The Commissioner or the designated hearing officer shall then issue an order.

"§ 58-45-55. Reports of inspection made available.

All reports of inspection performed by or on behalf of the Association shall be made available to the members of the Association, applicants, agent or broker, and the Commissioner.

"§ 58-45-60. Association and Commissioner immune from liability.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article.

"**§ 58-45-65. Association to file annual report with Commissioner.**

The Association shall file in the office of the Commissioner on an annual basis on or before January 1 a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the Association to furnish to him any additional information with respect to its transactions or any other matter which the Commissioner deems to be material to assist him in evaluating the operation and experience of the Association.

"**§ 58-45-65.1. Association to be audited.**

The Association shall be audited on an annual basis by an auditor selected by the Commissioner.

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when he deems it to be prudent and in undertaking such examination he may hold a public hearing pursuant to the provisions of G.S. 58-2-50. ~~The expenses of such examination shall be borne and paid by the Association.~~ When making an examination under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the Association. Examinations shall be conducted in accordance with G.S. 58-2-131, 58-2-132, and 58-2-133.

"**§ 58-45-71. Report of member companies to Commissioner.**

Each member company of the Association shall report by February 1 of each year to the Commissioner the amount of homeowners' coverage, including separate coverage for homeowners' wind and hail, written in the preceding calendar year by that member company in the beach area and the coastal area. The report shall include the number and type of homeowners' policies written by the member company in each area, the total amount of homeowners' coverage for each area, any increases and decreases in homeowners' coverage written in each area from the prior year, and other information as prescribed by the Commissioner and in such form as approved by him.

"**§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

The Commissioner shall have authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this Article. The Commissioner shall not be liable for any act or omission in connection with the administration of the duties imposed upon him by the provisions of this Article.

"**§ 58-45-80. Premium taxes to be paid through Association.**

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes.

"**§ 58-45-85. Assessment; inability to pay.**

(a) If any insurer fails, by reason of insolvency, to pay any assessment as provided in this Article, the amount assessed each insurer shall be immediately recalculated, excluding the insolvent insurer, so that its assessment is assumed and redistributed among the remaining insurers. Any assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of Article 5 of this Chapter for the benefit of policyholders.

(b) The nonrecoupable assessment of a member insurer may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the Commissioner or his designee, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer's business would be hazardous to its policyholders. If payment of an assessment against a member insurer is deferred by order of the Commissioner or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this Article. In its order of deferral, or in necessary subsequent orders, the Commissioner or his designee shall prescribe a plan by which the assessment so deferred must be repaid to the Association by the impaired insurer with interest at the six-month treasury bill rate adjusted semiannually. The plan also shall provide for the reimbursement of excess assessments paid by member companies as a result of a deferral of assessments for an impaired insurer.

"**§ 58-45-90. Open meetings.**

The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of the General Statutes, as amended.

"**§ 58-45-95. Information availability.**

Information concerning the Association's activities shall be made fully available upon request provided that no competitive information concerning an individual company's business plans, data, or operations may be disclosed by the Association if such company has properly designated such information as being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the Association. No confidential information may be disclosed by the Association identifying individual policyholders without such policyholders' consent unless such information is provided pursuant to reasonable rules adopted by the Association permitting such information to be disclosed for the purpose of enhancing the availability of insurance that is written in the voluntary market.

"**§ 58-45-96. Succession and dissolution.**

In the event that a successor organization is created to perform the Association's general functions, the surplus, assets, and liabilities then held by the Association shall be transferred to such successor organization. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the Association created pursuant to any financing arrangements entered into by the Association shall be and remain valid and enforceable on the successor organization, notwithstanding the commencement of any rehabilitation, insolvency, liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the Association. No such proceeding shall relieve the Association of its obligation to continue to collect assessments or other revenues pledged pursuant to any financing arrangements. In the event of dissolution, surplus then held shall not be distributed to member insurers."

SECTION 2. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and

prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

(4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.

(6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent

relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved."

SECTION 3. G.S. 58-36-15 is amended by adding a new subsection to read:

"(d1) With respect to property insurance rates, the Bureau shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures in the beach and coastal areas of the State. The Bureau shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported annually to the Commissioner."

SECTION 4. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-120. Public notice of certain filings.**

Whenever the North Carolina Rate Bureau files for an increase in insurance rates for residential property insurance, the Bureau shall give public notice in at least two newspapers with statewide distribution and in the North Carolina Register, within 10 business days after the filing, which notice shall state that the Commissioner may or may not schedule and conduct a hearing with respect to the filing. The same information shall be posted on the Web site for the North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within three days after the filing. The requirements of this section shall not apply to filings proposing changes as to forms, relativities and classifications that are filed at no increase in the overall rate level."

SECTION 5. G.S. 58-46-55 reads as rewritten:

"**§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

The rates, rating plans, rating rules, and forms applicable to the insurance written by the association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in this State. ~~No special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the geographic areas to which this Article applies.~~"

SECTION 6. The North Carolina Rate Bureau shall file for approval by the Commissioner no later than February 1, 2010, rating plans for policies under its jurisdiction in the beach and coastal areas of North Carolina that include a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property.

SECTION 7. The Legislative Research Commission may study the need for changes in the composition of the Board of Directors of the North Carolina Insurance Association and the method of selection of Board members. The Commission may also study the adequacy of public participation in the filing of rates for property insurance by the North Carolina Rate Bureau, the North Carolina Insurance Underwriting Association, and the North Carolina Joint Underwriting Association and the approval of those rates by the Commissioner, including the time limits for approval or disapproval by the Commissioner of rate filings. In its study, the Commission may examine the feasibility of establishing a permanent public advocacy staff to participate and advocate in rate-making proceedings under Articles 36, 45, and 46 of Chapter 58 of the General Statutes.

The Legislative Research Commission may make an interim report to the 2009 General Assembly, Regular Session 2010 and shall submit a final report to the 2011 General Assembly.

SECTION 8. The Legislative Services Officer shall allocate funds appropriated to the General Assembly for the expenditures of the Legislative Research Commission in conducting the study under Section 7 of this act.

SECTION 9. The provisions of this act are severable and, if any phrase, clause, sentence, or provision is declared to be unconstitutional, is preempted by federal law or regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected thereby.

SECTION 10. The provisions of G.S. 58-45-45(a2) as enacted by Section 1 of this act become effective when a rate or rates with a deductible for named storm wind and hail losses of one percent (1%) as required by that subsection become effective, as approved by the Commissioner. The remainder of this act is effective when it becomes law and applies to policies filed, issued, or renewed on or after that date.

HOUSE BILL 1305: Beach Plan Changes

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	August 4, 2009
Introduced by:	Rep. Holliman	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	PCS to Third Edition H1305-CSRG-52		

OVERVIEW: The North Carolina Insurance Underwriting Asssociation (NCIUA), also known as the Beach Plan was created to serve as a market of last resort to make property insurance available to people who are unable to buy insurance through the standard or voluntary market. The Association is not a public body, but is a private entity comprised of all property and casualty insurers in the State. By statute, the Plan covers two areas: (1) the barrier islands, referred to under the Plan as the Beach area; and (2) 18 coastal counties, referred to as the Coastal area. The Plan offers commercial, homeowners, dwelling, and wind only coverage.

All member companies share in the expenses, profits, and losses of the Plan. Each year that the Plan generates revenues in excess of claims paid, the Plan may elect to return the excess funds to the member companies or hold those funds as "surplus." The surplus is used to cover Plan losses where claims filed are greater than the premium received. Should claims exceed the revenues from premiums, the amount of surplus, and any applicable reinsurance, member companies are assessed by the Plan to pay the claims.

The Plan also files with the Commissioner for his or her approval rates for separate policies of windstorm and hail, policy deductible plans to be paid by property owners, and the percentage differential or surcharge for coverage offered by the Plan. The surcharge is a percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to purchase homeowners coverage through the Plan. The surcharge applies to homeowner's coverage and homeowner's wind and hail coverage only.

Since 1995, exposure to losses for all properties covered by the Plan has grown exponentially. The NCIUA estimates that in 1995 total exposure under the Plan was $3.6B. By 2008, exposure had grown to $72B, leading to concern that assessments on insurers for losses resulting from a hurricane may cause financial difficulties for many insurers.

SUMMARY: Proposed Committee Substitute for House Bill 1305 makes various changes to Article 45 of Chapter 58 of the General Statutes. These changes include the following:

- Renames the Beach Plan the "Coastal Property Insurance Pool."
- Requires that the surplus of the Association be retained to pay losses, purchase reinsurance, and pay operating expenses and provides that the surplus may not be distributed to member companies.
- Sets maximum coverage limits by statute and decrease those limits to $1,000,000 for homeowners and dwelling policies (currently $1.5M) and limits contents coverage to 40% of building value (currently 70%).

- Sets homeowners coverage surcharges by statute at current rates of 5% above approved voluntary market rates for separate wind and hail coverage and 15% for wind and hail as a part of a homeowner's policy.
- Provides that surcharges may be applied to dwelling and commercial policies, not just homeowners policies.
- Requires the Beach Plan to set a minimum **named storm** deductible for wind and hail coverage of one percent (1%) of the insured value of the property.
- Requires the Association to file a schedule of credits for policyholders based on mitigation and construction features. Requires the Rate Bureau to do the same for policyholders in the beach and coastal areas of the State.
- Requires the Association to submit to the Commissioner an installment plan for premium payments.
- Provides that when losses incurred by the Association result in an assessment against insurers of $1B, the Association may, subject to verification of the amount of losses and expenses by the Commissioner, institute a catastrophe recovery charge on residential and commercial policyholders statewide to finance the remaining losses. The charge, as prescribed by the Commissioner, shall not exceed an aggregate amount of 10% of the annual policy premium on any one policy of insurance.
- Requires insurers to report by February 1 of each year the amount of homeowner's insurance written in the Beach and Coastal areas.
- Provides that information concerning the Association's activities shall be made fully available upon request.
- Requires the N.C. Rate Bureau to revise, monitor, and review territories in the Beach and Coastal areas.
- Requires the Beach Plan to be audited annually by an auditor selected by the Commissioner.
- Requires public notice in at least two newspapers with statewide distribution of filings for increases in residential property insurance rates.
- Authorizes the Legislative Research Commission (LRC) to study changes in the composition of the Board of Directors of the Association, public participation in the rate-making process, time limits for approval or disapproval by the Commissioner of rate filings, and the establishment of a public advocacy staff in rate-making proceedings.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 1305 is effective when it becomes law and applies to policies filed, issued, or renewed on or after that date.

H1305-SMRG-103(CSRG-52) v2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, August 05, 2009

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1305** Beach Plan Changes.

Draft Number:	11032
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
H1305 – Sen. Rand

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Wednesday	August 5, 2009	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1305	Beach Plan Changes.	Representative Holliman

Senator R. C. Soles, Jr., Chair

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Wohlers	NCDOT
	NVC
Henry Hunter	N.C.B.A.
DAVID BARNES	Poyner Spruill
Bob Herlong	PCI
	NMRS
Michelle Frazier	MFTS
Jennifer Cohen	IFNC
DAVID RICE	MANNING FULTON
David Stollen	STATE FARM

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Louis Belo	NCDOI
Kasey Ginsberg	Cintas Institute
Paul Stock	NCBA
Mary Selvidge	IFNC
Kevin Conley	DOI
Bob Mack	DOI
Rose V. Williams	DOI
Casandra White	NCAOC
Terry Aarestad	J. Warren Jasse
Will Culpepper	MVA
Seth Pelo	

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

August 5, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Chris Valauri	Valauri Group LLC
R Paul Wilms	CWGR
Lisa Martin	NC Home Builders
Jessi Hayes	
Cady Thomas	NC Assn of REALTORS
Rick Zechini	
Susan Valauri	Nationwide
Steve Carroll	Farm Bureau Ins. Co.
[signature]	UNC School of Law
Michelle Greene	Young Moore + Henderson
Bill Troutt	Young Moore Henderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

August 5, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	MWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

August 5, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy McConkey	Smith Anderson
	SDALPA
	Francis Group, Inc.
Fred Fuller	NC DOI
	CATA
	CAPA
Steve Wilson	NCFB
Daniel Raum	K&L Gates
	MWC
	NCFA
	NCFB

VISITOR REGISTRATION SHEET

Senate Commerce Committee — August 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
PATRICK HANNAH	LIBERTY MUTUAL
Lynn Knauf	Property Casualty Insurers Assoc.
TYLER NEWMAN	BASF
David McGowan	NC Realtors
Victoria Hawkins	Bode + Assoc.
Robert PASCHAL	Young Moore
Sara Riggins	John Locke Foundation
Kristin Milam	NCDOT
Sean Quinn	Sierra Club
Drew Ball	Sierra Club
Dan Conrad	NCCV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1305
Committee Substitute Favorable 7/1/09
Committee Substitute #2 Favorable 7/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1305-CSRG-52 [v.8]

8/4/2009 7:42:49 PM

Short Title: Beach Plan Changes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE COASTAL PROPERTY INSURANCE POOL, PRESENTLY KNOWN AS THE BEACH PLAN, AS RECOMMENDED BY THE JOINT SELECT STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR HURRICANES ON THE NORTH CAROLINA INSURANCE INDUSTRY; REQUIRE THAT THE NORTH CAROLINA RATE BUREAU PROVIDE PUBLIC NOTICE OF CERTAIN FILINGS IN NEWSPAPER PUBLICATIONS AND VIA INTERNET; REAFFIRM THAT THE NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION IS INTENDED TO BE EXEMPT FROM STATE AND FEDERAL TAXATION, EXCEPT FOR PREMIUM TAXES; CLARIFY THE POWERS AND DUTIES OF THE ASSOCIATION; CLARIFY AND PROVIDE CERTAINTY REGARDING ASSESSMENTS AGAINST MEMBER INSURANCE COMPANIES BY THE ASSOCIATION; ADJUST THE COVERAGE LIMITS OF THE ASSOCIATION IN ORDER TO ENSURE THAT THE COASTAL PROPERTY INSURANCE POOL IS THE MARKET OF LAST RESORT; MANDATE THAT THE ASSOCIATION SHALL RETAIN ALL SURPLUS FOR USE IN PURCHASING REINSURANCE, PAYING CLAIMS TO POLICYHOLDERS, AND FOR ASSOCIATION OBLIGATIONS; PROHIBIT DISTRIBUTION OF SURPLUS TO MEMBER INSURANCE COMPANIES; REQUIRE THE ASSOCIATION AND THE RATE BUREAU TO FILE A SCHEDULE OF PREMIUM CREDITS FOR POLICYHOLDERS WHO HAVE VOLUNTARILY MITIGATED THEIR RISK OF DAMAGE; REQUIRE THE ASSOCIATION TO ESTABLISH AND MAINTAIN AN INSTALLMENT PLAN FOR PREMIUM PAYMENTS FOR THE EASE OF POLICYHOLDERS; DEFINE AND ESTABLISH WHAT ACTIONS ARE ALLOWED UPON THE OCCURRENCE OF A DEFICIT EVENT, INCLUDING CAPPING ANY CATASTROPHE RECOVERY CHARGE FROM HOMEOWNERS STATEWIDE; REQUIRE THAT ASSOCIATION ACTIVITIES BE MADE TRANSPARENT AND AVAILABLE; PROVIDE FOR SUCCESSION AND DISSOLUTION OF THE ASSOCIATION; PROVIDE FOR SURCHARGES OF FIVE PERCENT FOR SEPARATE WIND AND HAIL COVERAGE, FIFTEEN PERCENT FOR WIND AND HAIL HOMEOWNERS COVERAGE, AND A MINIMUM NAMED STORM WIND AND HAIL DEDUCTIBLE OF ONE PERCENT FOR COVERAGE WRITTEN BY THE ASSOCIATION; PROVIDE FOR SURCHARGES ON

COMMERCIAL AND DWELLING COVERAGE IN ADDITION TO SURCHARGES CURRENTLY IMPOSED ON HOMEOWNERS POLICIES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45 of Chapter 58 of the General Statutes reads as rewritten:

"Article 45.

"Essential Property Insurance for Beach Area Property.

"**§ 58-45-1. Declarations and purpose of Article.**

(a) It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of those areas would be severely impeded; that furthermore, adequate insurance upon property in the beach and coastal areas is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach and coastal areas of North Carolina.

(b) The General Assembly further declares that it is its intent in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort.

(c) It is the intent of the General Assembly that except for North Carolina gross premium taxes and the fire and lightning tax, the activities of the Association be exempt from State and federal taxation to the fullest extent permitted by law.

"**§ 58-45-5. Definition of terms.**

As used in this Article, unless the context clearly otherwise requires:

(1) ~~"Association" means~~Association. – ~~the~~ The North Carolina Insurance Underwriting Association established under this ~~Article;~~Article.

(2) ~~"Beach area" means~~ Beach area. – ~~all~~ All of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer ~~Banks;~~Banks.

(2a) ~~"Coastal area" means~~Coastal area. – ~~all~~ All of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. "Coastal area" does not include the portions of these counties that lie within the beach area.

(2b) Catastrophe recovery charge. – Any charge collected by member insurers from policyholders statewide, including any charge collected by the Association and Fair Plan from their policyholders, upon issuance or renewal of residential and commercial property insurance policies, other than National Flood Insurance policies, after a deficit event has occurred as provided in G.S. 58-45-47. The amount of the catastrophe recovery charge collected in a particular year shall not exceed an aggregate amount of ten

percent (10%) of policy premium. The catastrophe recovery charge shall be limited to the recovery of losses resulting from claims for property damage, allocated loss expenses, and actual costs and expenses directly resulting from the catastrophe recovery charge plan.

(2c) Coastal Property Insurance Pool. – The name of which was formerly known as "the Beach Plan" and which is governed by the North Carolina Insurance Underwriting Association. All references to the "Beach Plan" shall mean the Coastal Property Insurance Pool, which is the market of last resort provided by the Association to the Beach area and the Coastal area.

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) ~~"Crime insurance" means~~Crime insurance. – ~~insurance~~ Insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.

(3b) ~~"Directors" means~~Directors. – ~~the~~ The Board of Directors of the Association.

(4) ~~"Essential property insurance" means~~Essential property insurance. – ~~insurance~~ Insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the ~~Commissioner;~~Commissioner.

(5) ~~"Insurable property" means~~ Insurable property. – ~~real~~ Real property at fixed locations in the beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor vehicles; which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is

built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.

(6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.

(6a) ~~"Net direct premiums" means~~Net direct premiums. – ~~gross~~ Gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, farm owners insurance, homeowners insurance, and the property portion of commercial multiple peril insurance policies as computed by the Commissioner, less:

a. Return premiums on uncancelled contracts;

b. Dividends paid or credited to policyholders; and

c. The unused or unabsorbed portion of premium deposits.

(6b) Named storm. – A weather-related event involving wind that has been assigned a formal name by the National Hurricane Center, National Weather Service, World Meteorological Association, or any other generally recognized scientific or meteorological association that provides formal names for public use and reference. A named storm includes hurricanes, tropical depressions, and tropical storms.

(6c) Nonrecoupable assessment. – Any assessment levied on and payable by members of the Association that is not directly recoverable from policyholders. Prospective exposure to nonrecoupable assessments shall be considered as an appropriate factor in the making of rates by the North Carolina Rate Bureau.

(7) ~~"Plan of operation" or "plan" means~~Plan of operation. – ~~the~~ The plan of operation of the Association approved or promulgated by the Commissioner under this Article.

(8) Voluntary market. – Insurance written voluntarily by companies other than through this Article or Article 46 of this Chapter.

(9) Voluntary market rates. – Property insurance rates determined or permitted under Article 36, 40, or 41 of this Chapter.

"§ 58-45-6. Persons who can be insured by the Association.

As used in this Article, "person" includes the State of North Carolina and any county, city, or other political subdivision of the State of North Carolina.

"§ 58-45-10. North Carolina Insurance Underwriting Association created.

There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, essential property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b and except an insurer who only writes insurance in this State on property exempted from taxation by the provisions of G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State.

"**§ 58-45-15. Powers and duties of Association.**

The Association shall, pursuant to the provisions of this Article and the plan of operation, and with respect to the insurance coverages authorized in this Article, have the power on behalf of its members:

(1) To cause to be issued policies of insurance to ~~applicants;~~applicants.

(2) To assume reinsurance from its ~~members;~~members.

(3) To cede reinsurance to its members and to purchase reinsurance in behalf of its ~~members.~~members.

(4) To pledge the proceeds of assessments, projected reinsurance recoveries, other recoverables, and any other funds available to the Association as the source of revenue for and to secure lines of credit or other borrowings or financing arrangements necessary to fund any actual, projected, or future deficits of the Association, including borrowing from member companies.

(5) To publish in the North Carolina Register all homeowners' rate filings with the Department of Insurance.

"**§ 58-45-20. Temporary directors of Association.**

Within 10 days after April 17, 1969, the Commissioner shall appoint a temporary board of directors of this Association, which shall consist of 11 representatives of members of the Association. Such temporary board of directors shall prepare and submit a plan of operation in accordance with G.S. 58-45-30 and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

"**§ 58-45-25. Each member of Association to participate in nonrecoupable assessments. ~~its expenses, profits, and losses.~~**

(a) Subject to the limitations contained in G.S. 58-45-47, ~~Each~~ each member of the Association shall participate in the ~~expenses, profits, and losses of~~nonrecoupable assessments levied by the Association in the proportion that its net direct premium written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

(b) All member companies shall receive credit each year for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas in accordance with guidelines and procedures to be submitted by the Directors to the Commissioner for approval. Such credits shall also apply to any nonrecoupable assessments levied pursuant to G.S. 58-45-47. The participation of each member company in the ~~expenses, profits, and losses of~~ nonrecoupable assessments levied by the Association shall be reduced accordingly; provided, no credit shall be given where coverage for the peril of wind has been excluded. The guidelines and procedures for granting credit shall encourage and assist each member company to voluntarily write these coverages in the beach and coastal areas for commercial and residential properties.

(b1) The accumulated surplus of the Association shall be retained from year to year and used to pay losses, reinsurance costs, and other operating expenses as necessary. No member

company shall be entitled to the distribution of any portion of the Association's surplus, except pursuant to judgments entered prior to the effective date of this law.

(b2) The premiums, surplus, assessments, investment income, and other revenue of the Association are funds received for the sole purpose of providing insurance coverage, paying claims for Association policyholders, purchasing reinsurance, securing and repaying debt obligations issued by the Association, and conducting all other activities of the Association, as required or permitted by this Article. Accumulated surplus shall not be removed from the Association or used for other purposes except pursuant to contractual obligations incurred by the Association prior to the effective date of this law.

(c) The North Carolina Insurance Underwriting Association shall use the "take out" program, as filed with and approved by the Commissioner, in the coastal area.

"§ 58-45-30. Directors to submit plan of operation to Commissioner; review and approval; ~~amendments.~~amendments; appeal from Commissioner to superior court.

(a) The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance, farmowners, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach and coastal areas of North Carolina to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in those areas. The plan may include the establishment of necessary facilities; management of the Association; the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance; and any other provisions that are considered necessary by the Commissioner to carry out the purposes of this Article.

(b) The proposed plan and any amendments thereto shall be filed with ~~reviewed by~~ the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within 30 days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a plan that meets the requirements of this Article ~~a proposed plan of operation within 90 days of April 17, 1969, or a new plan which is acceptable to the Commissioner,~~ or accept the recommendations of the Commissioner within 30 days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation that meets the requirements of this Article certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect 10 days after certification to the ~~directors:~~ directors. ~~Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this Article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.~~

(c) The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time the Commissioner deems expedient or prudent, but not less than once in each calendar year. After review of the plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of the amendment. Any order of the Commissioner with respect to the proposed plan of operation or any amendments thereto shall be subject to review upon petition by the Association as provided by G.S. 58-2-75.

(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. Homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas who meet the Association's underwriting standards and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The Association shall file for approval by the Commissioner underwriting standards to determine whether property is insurable. The standards shall reflect underwriting standards commonly used in the voluntary homeowners' insurance business. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties.

(e) The Association shall, subject to the Commissioner's approval or modification, provide in the plan of operation for coverage for appropriate classes of manufacturing risks.

(f) As used in this section, "plan of operation" includes all written rules, practices, and procedures of the Association, except for staffing and personnel matters.

"**§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. A broker or agent authorized by the applicant may apply on the applicant's behalf. Each application shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for essential property insurance on the property.

The term "insurable interest" as used in this subsection shall include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property.

(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy.

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an

application within the time prescribed in the plan of operation, the applicant may appeal to the Commissioner and the Commissioner, or the Commissioner's designee from the Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under this section, the Commissioner may request, and the Association shall provide, any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under Article 33 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association. The foregoing notwithstanding, an agent of a company which is a member of the Association shall have the authority, subject to the underwriting guidelines established by the Association, to temporarily bind coverage with the Association. The Association shall establish rules and procedures, including any limitations for binding authority, in the plan of operation.

Any unearned premium on the temporary binder shall be returned to the policyholder if the Association refuses to issue a policy. Nothing in this section shall prevent the Association from suspending binding authority in accordance with its plan of operation.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for the Commissioner's approval before they may be used. Catastrophic losses, as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. The Association shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting windstorm and hail losses.

"**§ 58-45-36. Temporary contracts of insurance.**

Consistent with G.S. 58-45-35(d), the Association shall be temporarily bound by a written temporary binder of insurance issued by any duly licensed insurance agent or broker. Coverage shall be effective upon payment to the agent or broker of the entire premium or part of the premium, as prescribed by the Association's plan of operation. Nothing in this section shall impair or restrict the rights of the Association under G.S. 58-45-35(b) to decline to issue a policy based upon a lack of insurability as determined by the Association or the existence of an unpaid premium due from the applicant.

"**§ 58-45-40. Association members may cede insurance to Association.**

Any member of the Association may cede to the Association essential property insurance written on insurable property, to the extent, if any, and on the terms and conditions set forth in the plan of operation.

"**§ 58-45-41. Coverage limits.**

(a) The Association shall cause to be issued insurance up to the reasonable value of the insurable property, subject to a maximum of one millions dollars ($1,000,000) on habitational property. The above limits on habitational property shall apply to the value of the building only. Insurance issued by the Association for commercial property shall not exceed three million dollars ($3,000,000) on any freestanding structure or any building unit within multiple firewall divisions, provided the aggregate insurance on structures with multiple firewall divisions shall not exceed six million dollars ($6,000,000) on all interest at one risk.

(b) Contents of habitational property can be insured up to forty percent (40%) of the building value. The Association shall ensure that rates accurately reflect the maximum limits for contents coverage and any reduction in contents coverage limits for habitational property.

(c) If the value of the property exceeds the maximum coverage limits as described in this section, the Association shall not issue coverage without the insured's purchase of excess coverage to the full value of the property insured.

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory. Except as provided in ~~subsection (b)~~ subsections (a1), (a2), and (b) of this section, ~~the~~ rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach and coastal areas.

(a1) Effective January 1, 2010, the Association's rates shall be the North Carolina Rate Bureau Manual Rates plus a surcharge of five percent (5%) of the applicable North Carolina Rate Bureau Manual Rate for wind and hail coverage and a surcharge of fifteen percent (15%) of the applicable North Carolina Rate Bureau Manual Rate for homeowners' insurance including wind and hail coverage. It is the intent of the General Assembly that these surcharges ensure that the Coastal Property Insurance Pool is the market of last resort over and above the manual rate.

(a2) The Association shall offer a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property for all policies and may offer any other deductible options provided by the North Carolina Rate Bureau, so long as the deductible is not lower than one percent (1%) of the insured value of the property applicable to named storm wind and hail losses.

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Notwithstanding subsection (a) of this section, the Association may, subject to the prior approval of the Commissioner, adopt a schedule of special surcharges above corresponding manual rates and the rates set out in subsection (a1) of this section relating to ~~homeowners' insurance~~ homeowners', dwelling, and commercial policies issued by the ~~Association pursuant to G.S. 58-45-30(d).~~ Association, including coverage for separate policies of windstorm and hail written by the Association pursuant to G.S. 58-45-35(b) and (e) in conjunction with policies written pursuant to Article 36 of this Chapter. Such schedule may reflect any differences in risk that can be demonstrated to have a probable effect on losses or expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of G.S. 58-36-10(1), 36-15(a), 58-36-20, and 58-36-25 shall apply to such filings.

(d) When the Association files rates, classification plans, rating plans, rating systems, or surcharges, the procedures of G.S. 58-40-25 through G.S. 58-40-45 shall apply, and the appeal procedures of G.S. 58-2-80 and G.S. 58-2-85 shall apply to filings under this section, except as otherwise provided.

(e) The Association shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures. The Association shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Association

annually, with the results included as part of the Association's annual report to the Commissioner.

(f) The Association shall file not later than May 1, 2010, with the Commissioner an installment plan for premium payments and shall accept other methods of payment that are the same as those filed by the North Carolina Rate Bureau. The Association shall collect an installment fee if premiums are paid other than on an annual basis.

(g) The Association shall consider the purchase of reinsurance each calendar in order to maintain the ability to pay losses and expenses from a named storm or combination of named storms.

"**§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

The Association shall make provisions for reserving unearned premiums and reserving for losses, including incurred but not reported losses, and loss expenses, in accordance with G.S. 58-3-71, 58-3-75, and 58-3-81.

"**§ 58-45-47. Deficit event.**

(a) In the event of losses and expenses to the Association exceeding available surplus, reinsurance, and other sources of funding of Association losses, the Association is authorized to issue an assessment upon its members in accordance with its Plan of Operation. Member assessments shall not exceed one billion dollars ($1,000,000,000) for losses incurred from any event or series of events that occur in a given calendar year, regardless of when such assessments are actually levied on or collected from member companies.

(b) When the Association knows that it has incurred losses and loss expenses in a particular calendar that will exceed the combination of available surplus, reinsurance, and other sources of funding, including permissible member company assessments, then the Association shall immediately give notice to the Commissioner that a deficit event has occurred.

(c) Upon a determination by the Association that a deficit event has occurred, the Association shall determine, in its discretion, the appropriate means of financing the deficit, which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit, or other forms of borrowing or financing. If the Association determines that the member companies have paid one billion dollars ($1,000,000,000) in assessments for losses and expenses incurred in any given year pursuant to subsection (a) of this section, the Association may, subject to the verification by the Commissioner that the dollar value of losses and expenses has reached the level necessary for a catastrophe recovery charge, authorize member companies to impose a catastrophe recovery charge on their residential and commercial property insurance policyholders statewide. Catastrophe recovery charges shall be charged as a uniform percentage of written premiums as prescribed by the Commissioner and shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one policy of insurance. Catastrophe recovery charges collected under this section shall be transferred directly to the Association on a periodic basis as determined by the Association and ordered by the Commissioner. The Association and the FAIR Plan shall also charge their policyholders a catastrophe recovery charge as provided in this section.

(d) The catastrophe recovery charge shall be clearly identified to policyholders on the premium statement, declarations page, or by other appropriate electronic or written method. The identification shall refer to the post-catastrophe loss for which the charge was imposed. Any such catastrophe recovery charge shall not be considered premium for any purpose, including premium taxes or commissions, except that failure to pay the catastrophe recovery charge shall be treated as failure to pay premium and shall be grounds for termination of insurance. The identified catastrophe recovery charge shall be accompanied by an explanation of the charge and shall appear on the medium by which the charge is conveyed to the policyholder. The explanatory language shall be prescribed by the Commissioner.

(e) The Association shall report quarterly to the Commissioner providing all financial information for each catastrophe recovery charge authorized by this section, including total

catastrophe recovery charge funds recovered to date and any information reasonably requested by the Commissioner.

(f) The Association shall recalculate the catastrophe recovery charge amount annually and, subject to procedure approved by the Commissioner, adjust the charge percentage as needed.

(g) The catastrophe recovery charge amount shall continue until financing of the deficit event has been paid in full. Upon order of cessation, any catastrophe recovery charge amounts collected by member companies, the Association or the FAIR Plan that exceed amounts necessary for payment of the debt shall be remitted to the Association and added to the surplus for the purposes of offsetting future Association losses or expenses.

(h) Nothing contained in this section prohibits the Association from entering into any financing arrangements for the purpose of financing a deficit, provided that the pledge of catastrophe recovery charge amounts under such financing agreements shall not result in the actual levying of any catastrophe recovery charge until after the Association has incurred a deficit and until after the Commissioner has approved implementation of the Association's catastrophe recovery charge plan.

"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

(a) Any person or any insurer who may be aggrieved by an act, ruling, or decision of the Association other than an act, ruling, or decision relating to (i) the cause or amount of a claimed loss or (ii) the reasonableness of expenses incurred by an insurer in adjusting windstorm and hail losses, may, within 30 days after the ruling, appeal to the Commissioner. Any hearings held by the Commissioner under the appeal shall be in accordance with rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of the Commissioner's staff as deputy commissioner for the purpose of hearing those appeals and a ruling based upon the hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as is provided in G.S. 58-2-75.

(b) No later than 10 days before each hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence that the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence that the appellee intends to offer at the hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an insurer and the Association, the cost of the recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. If the matter is between an insured and the Association, the cost of transcribing shall be borne equally by the appellant and appellee; provided that the Commissioner may order the Association to pay recording or transcribing costs for which the insured is financially unable to pay. Each party shall, on a date determined by the Commissioner or the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the designated hearing officer and serve on the other party, a proposed order. The Commissioner or the designated hearing officer shall then issue an order.

"§ 58-45-55. Reports of inspection made available.

All reports of inspection performed by or on behalf of the Association shall be made available to the members of the Association, applicants, agent or broker, and the Commissioner.

"§ 58-45-60. Association and Commissioner immune from liability.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article.

"**§ 58-45-65. Association to file annual report with Commissioner.**

The Association shall file in the office of the Commissioner on an annual basis on or before January 1 a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the Association to furnish to him any additional information with respect to its transactions or any other matter which the Commissioner deems to be material to assist him in evaluating the operation and experience of the Association.

"**§ 58-45-65.1. Association to be audited.**

The Association shall be audited on an annual basis by an auditor selected by the Commissioner.

"**§ 58-45-70. Commissioner may examine affairs of Association.**

The Commissioner may from time to time make an examination into the affairs of the Association when he deems it to be prudent and in undertaking such examination he may hold a public hearing pursuant to the provisions of G.S. 58-2-50. ~~The expenses of such examination shall be borne and paid by the Association.~~ When making an examination under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the Association. Examinations shall be conducted in accordance with G.S. 58-2-131, 58-2-132, and 58-2-133.

"**§ 58-45-71. Report of member companies to Commissioner.**

Each member company of the Association shall report by February 1 of each year to the Commissioner the amount of homeowners' coverage, including separate coverage for homeowners' wind and hail, written in the preceding calendar year by that member company in the beach area and the coastal area. The report shall include the number and type of homeowners' policies written by the member company in each area, the total amount of homeowners' coverage for each area, any increases and decreases in homeowners' coverage written in each area from the prior year, and other information as prescribed by the Commissioner and in such form as approved by him.

"**§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.**

The Commissioner shall have authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this Article. The Commissioner shall not be liable for any act or omission in connection with the administration of the duties imposed upon him by the provisions of this Article.

"**§ 58-45-80. Premium taxes to be paid through Association.**

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes.

"**§ 58-45-85. Assessment; inability to pay.**

(a) If any insurer fails, by reason of insolvency, to pay any assessment as provided in this Article, the amount assessed each insurer shall be immediately recalculated, excluding the insolvent insurer, so that its assessment is assumed and redistributed among the remaining insurers. Any assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of Article 5 of this Chapter for the benefit of policyholders.

(b) The nonrecoupable assessment of a member insurer may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the Commissioner or his designee, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer's business would be hazardous to its policyholders. If payment of an assessment against a member insurer is deferred by order of the Commissioner or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this Article. In its order of deferral, or in necessary subsequent orders, the Commissioner or his designee shall prescribe a plan by which the assessment so deferred must be repaid to the Association by the impaired insurer with interest at the six-month treasury bill rate adjusted semiannually. The plan also shall provide for the reimbursement of excess assessments paid by member companies as a result of a deferral of assessments for an impaired insurer.

"**§ 58-45-90. Open meetings.**

The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of the General Statutes, as amended.

"**§ 58-45-95. Information availability.**

Information concerning the Association's activities shall be made fully available upon request provided that no competitive information concerning an individual company's business plans, data, or operations may be disclosed by the Association if such company has properly designated such information as being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the Association. No confidential information may be disclosed by the Association identifying individual policyholders without such policyholders' consent unless such information is provided pursuant to reasonable rules adopted by the Association permitting such information to be disclosed for the purpose of enhancing the availability of insurance that is written in the voluntary market.

"**§ 58-45-96. Succession and dissolution.**

In the event that a successor organization is created to perform the Association's general functions, the surplus, assets, and liabilities then held by the Association shall be transferred to such successor organization. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the Association created pursuant to any financing arrangements entered into by the Association shall be and remain valid and enforceable on the successor organization, notwithstanding the commencement of any rehabilitation, insolvency, liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the Association. No such proceeding shall relieve the Association of its obligation to continue to collect assessments or other revenues pledged pursuant to any financing arrangements. In the event of dissolution, surplus then held shall not be distributed to member insurers."

SECTION 2. G.S. 58-36-10 reads as rewritten:

"**§ 58-36-10. Method of rate making; factors considered.**

The following standards shall apply to the making and use of rates:

(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and

prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.

(3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

(4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

(5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.

(6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent

relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved."

SECTION 3. G.S. 58-36-15 is amended by adding a new subsection to read:

"(d1) With respect to property insurance rates, the Bureau shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures in the beach and coastal areas of the State. The Bureau shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported annually to the Commissioner."

SECTION 4. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-120. Public notice of certain filings.**

Whenever the North Carolina Rate Bureau files for an increase in insurance rates for residential property insurance, the Bureau shall give public notice in at least two newspapers with statewide distribution and in the North Carolina Register, within 10 business days after the filing, which notice shall state that the Commissioner may or may not schedule and conduct a hearing with respect to the filing. The same information shall be posted on the Web site for the North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within three days after the filing. The requirements of this section shall not apply to filings proposing changes as to forms, relativities and classifications that are filed at no increase in the overall rate level."

SECTION 5. G.S. 58-46-55 reads as rewritten:

"**§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.**

The rates, rating plans, rating rules, and forms applicable to the insurance written by the association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in this State. ~~No special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the geographic areas to which this Article applies.~~"

SECTION 6. The North Carolina Rate Bureau shall file for approval by the Commissioner no later than February 1, 2010, rating plans for policies under its jurisdiction in the beach and coastal areas of North Carolina that include a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property.

SECTION 7. The Legislative Research Commission may study the need for changes in the composition of the Board of Directors of the North Carolina Insurance Association and the method of selection of Board members. The Commission may also study the adequacy of public participation in the filing of rates for property insurance by the North Carolina Rate Bureau, the North Carolina Insurance Underwriting Association, and the North Carolina Joint Underwriting Association and the approval of those rates by the Commissioner, including the time limits for approval or disapproval by the Commissioner of rate filings. In its study, the Commission may examine the feasibility of establishing a permanent public advocacy staff to participate and advocate in rate-making proceedings under Articles 36, 45, and 46 of Chapter 58 of the General Statutes.

The Legislative Research Commission may make an interim report to the 2009 General Assembly, Regular Session 2010 and shall submit a final report to the 2011 General Assembly.

SECTION 8. The Legislative Services Officer shall allocate funds appropriated to the General Assembly for the expenditures of the Legislative Research Commission in conducting the study under Section 7 of this act.

SECTION 9. The provisions of this act are severable and, if any phrase, clause, sentence, or provision is declared to be unconstitutional, is preempted by federal law or regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected thereby.

SECTION 10. The provisions of G.S. 58-45-45(a2) as enacted by Section 1 of this act become effective when a rate or rates with a deductible for named storm wind and hail losses of one percent (1%) as required by that subsection become effective, as approved by the Commissioner. The remainder of this act is effective when it becomes law and applies to policies filed, issued, or renewed on or after that date.

HOUSE BILL 1305:
Beach Plan Changes

2009-2010 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	August 4, 2009
Introduced by:	Rep. Holliman	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	PCS to Third Edition H1305-CSRG-52		

OVERVIEW: The North Carolina Insurance Underwriting Asssociation (NCIUA), also known as the Beach Plan was created to serve as a market of last resort to make property insurance available to people who are unable to buy insurance through the standard or voluntary market. The Association is not a public body, but is a private entity comprised of all property and casualty insurers in the State. By statute, the Plan covers two areas: (1) the barrier islands, referred to under the Plan as the Beach area; and (2) 18 coastal counties, referred to as the Coastal area. The Plan offers commercial, homeowners, dwelling, and wind only coverage.

All member companies share in the expenses, profits, and losses of the Plan. Each year that the Plan generates revenues in excess of claims paid, the Plan may elect to return the excess funds to the member companies or hold those funds as "surplus." The surplus is used to cover Plan losses where claims filed are greater than the premium received. Should claims exceed the revenues from premiums, the amount of surplus, and any applicable reinsurance, member companies are assessed by the Plan to pay the claims.

The Plan also files with the Commissioner for his or her approval rates for separate policies of windstorm and hail, policy deductible plans to be paid by property owners, and the percentage differential or surcharge for coverage offered by the Plan. The surcharge is a percentage amount above the voluntary market rate approved by the Commissioner which all beach and coastal property owners must pay to purchase homeowners coverage through the Plan. The surcharge applies to homeowner's coverage and homeowner's wind and hail coverage only.

Since 1995, exposure to losses for all properties covered by the Plan has grown exponentially. The NCIUA estimates that in 1995 total exposure under the Plan was $3.6B. By 2008, exposure had grown to $72B, leading to concern that assessments on insurers for losses resulting from a hurricane may cause financial difficulties for many insurers.

SUMMARY: Proposed Committee Substitute for House Bill 1305 makes various changes to Article 45 of Chapter 58 of the General Statutes. These changes include the following:

- Renames the Beach Plan the "Coastal Property Insurance Pool."
- Requires that the surplus of the Association be retained to pay losses, purchase reinsurance, and pay operating expenses and provides that the surplus may not be distributed to member companies.
- Sets maximum coverage limits by statute and decrease those limits to $1,000,000 for homeowners and dwelling policies (currently $1.5M) and limits contents coverage to 40% of building value (currently 70%).

- Sets homeowners coverage surcharges by statute at current rates of 5% above approved voluntary market rates for separate wind and hail coverage and 15% for wind and hail as a part of a homeowner's policy.
- Provides that surcharges may be applied to dwelling and commercial policies, not just homeowners policies.
- Requires the Beach Plan to set a minimum **named storm** deductible for wind and hail coverage of one percent (1%) of the insured value of the property.
- Requires the Association to file a schedule of credits for policyholders based on mitigation and construction features. Requires the Rate Bureau to do the same for policyholders in the beach and coastal areas of the State.
- Requires the Association to submit to the Commissioner an installment plan for premium payments.
- Provides that when losses incurred by the Association result in an assessment against insurers of $1B, the Association may, subject to verification of the amount of losses and expenses by the Commissioner, institute a catastrophe recovery charge on residential and commercial policyholders statewide to finance the remaining losses. The charge, as prescribed by the Commissioner, shall not exceed an aggregate amount of 10% of the annual policy premium on any one policy of insurance.
- Requires insurers to report by February 1 of each year the amount of homeowner's insurance written in the Beach and Coastal areas.
- Provides that information concerning the Association's activities shall be made fully available upon request.
- Requires the N.C. Rate Bureau to revise, monitor, and review territories in the Beach and Coastal areas.
- Requires the Beach Plan to be audited annually by an auditor selected by the Commissioner.
- Requires public notice in at least two newspapers with statewide distribution of filings for increases in residential property insurance rates.
- Authorizes the Legislative Research Commission (LRC) to study changes in the composition of the Board of Directors of the Association, public participation in the rate-making process, time limits for approval or disapproval by the Commissioner of rate filings, and the establishment of a public advocacy staff in rate-making proceedings.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 1305 is effective when it becomes law and applies to policies filed, issued, or renewed on or after that date.

H1305-SMRG-103(CSRG-52) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1305

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

H1305-ARG-54 [v.1]

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

Date _____,2009

Senator Rand

moves to amend the bill on page 10, line 17, by adding before the word "assessment" the word "nonrecoupable";

and on page 10, line 29, by adding after the word "in" the word "nonrecoupable".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1305

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H1305-ARG-55 [v.1]

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

Date _____,2009

Senator Rand

moves to amend the bill on page 6, line 8,
by deleting the words "contractual obligations" and substituting the words "judgments entered".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Senate Commerce Committee
2009-2010

Sen. R.C. Soles, Jr., Chair Room 2022, LB 733-5963 RC.Soles@ncleg.net	
Sen. David Hoyle, Vice Chair Room 300-A, LOB 733-5734 David.Hoyle@ncleg.net	Sen. Floyd McKissick, Vice Chair Room 621, LOB 733-4599 Floyd.McKissick@ncleg.net
Sen. Tom Apodaca Room 1127, LB 733-5745 Tom.Apodaca@ncleg.net	Sen. Doug Berger Room 622, LOB 715-8363 Doug.Berger@ncleg.net
Sen. Phil Berger Room 1026, LB 733-5708 Phil.Berger@ncleg.net	Sen. Harris Blake Room 517, LOB 733-4809 Harris.Blake@ncleg.net
Sen. Dan Blue Room 314, LOB 733-5752 Dan.Blue@ncleg.net	Sen. Julia Boseman Room 309, LOB 715-2525 Julia.Boseman@ncleg.net
Sen. Pete Brunstetter Room 522, LOB 733-7850 Peter.Brunstetter@ncleg.net	Sen. Debbie Clary Room 523, LOB 715-3038 Debbie.Clary@ncleg.net
Sen. Katie Dorsett Room 2106, LB 715-3042 Katie.Dorsett@ncleg.net	Sen. Tony Foriest Room 332, LOB 301-1446 Tony.Foriest@ncleg.net
Sen. James Forrester Room 1129, LB 715-3050 James.Forrester@ncleg.net	Sen. Linda Garrou Room 627, LOB 733-5620 Linda.Garrou@ncleg.net

Sen. Eddie Goodall Room 1414, LB 733-7659 Eddie.Goodall@ncleg.net	Sen. Steve Goss Room 1118, LB 733-5742 Steve.Goss@ncleg.net
Sen. Malcolm Graham Room 620, LOB 733-5650 Malcolm.Graham@ncleg.net	Sen. Neal Hunt Room 1102, LB 733-5850 Neal.Hunt@ncleg.net
Sen. Jim Jacumin Room 1113, LB 715-7823 Jim.Jacumin@ncleg.net	Sen. Clark Jenkins Room 308, LOB 715-3040 Clark.Jenkins@ncleg.net
Sen. Martin Nesbitt Room 300-B, LOB 715-3001 Martin.Nesbitt@ncleg.net	Sen. Bill Purcell Room 625, LOB 733-5953 William.Purcell@ncleg.net
Sen. Bob Rucho Room 515, LOB 733-5655 Bob.Rucho@ncleg.net	Sen. Larry Shaw Room 311, LOB 733-9349 Larry.Shaw@ncleg.net
Sen. Josh Stein Room 1028, LB 715-6400 Josh.Stein@ncleg.net	Sen. Richard Stevens Room 406, LOB 733-5653 Richard.Stevens@ncleg.net
Sen. Don Vaughan Room 411, LOB 733-5856 Don.Vaughan@ncleg.net	

SENATE COMMERCE COMMITTEE
Tuesday, June 1, 2010 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 1, 2010, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R.C. Soles presided. Perry Williams of Raleigh, Phillip Hedrick of Greensboro, Haley Wachter of Elizabethtown, David Ojo of Fayetteville, David Scoggins of Denver and Ellen Laws and Sam Freeman of Wilkesboro served as pages.

H.B. 766 – Amend Survivor's Alternative Benefit

Senator Doug Berger was recognized to explain the bill and moved to adopt the proposed committee substitute (PCS) for discussion. The motion carried. The PCS clarifies the protection provided by the North Carolina Life and Health Insurance Guaranty Association against failure in the performance of contractual obligations under annuity contracts because of the delinquency of the member insurer that issued the policies. Lowell Miller, Executive Director of the NC Life and Health Guaranty Association and Bill Patterson, a staff attorney with the Research Division, were recognized for further explanation and to answer questions. Senator Berger moved to give the PCS a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 1249 – Homebuilder Property Tax Deferral Change

Senator Dickson was recognized to explain the bill. She moved to adopt the PCS for discussion and the motion carried. The PCS clarifies that a property tax deferral program passed in 2009 that applies to residences contracted by general contractors also applies to builders who are members of specified business entities. Senator McKissick moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

S.B. 1216 – Extend Emergency Foreclosure Program

This bill was removed from the meeting's agenda.

The meeting adjourned at 11:20 AM.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 1, 2010	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 766	Amend Survivor's Alternate Benefit.	Representative Mobley Representative Jones Representative Parmon Representative Womble
HB 1249	Deep Vein Thrombosis Awareness Month.	Representative England, M.D. Representative Harrell
SB 1216	Extend Emergency Foreclosure Program.	Senator Blue

Senator R. C. Soles, Jr., Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 01, 2010

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

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

H.B. **1249** Deep Vein Thrombosis Awareness Month.

Draft Number:	11127
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **766** Amend Survivor's Alternate Benefit.

Draft Number:	80621
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

PAGES ATTENDING

Date: 6-1 11 AM

Committee: Commerce **Room:** 1027 LB

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Perry Williams	Raleigh	Senator Blue
2 Phillip Hedrick	Greensboro	Senator Vaughn
3 Haley Wachter	Elizabethtown	Dickson
4 David Ojo	Fayetteville	Dickson
5 David Scoggins	Denver	Forrester
6 Ellen Laws	wilkesboro	Goss
7 Sam Freeman	wilkesboro	Goss
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the neeting or a Sgt. at Arms.

Senate Commerce Committee
Tuesday, June 1, 2010, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 766	Amend Survivor's Alternate Benefit.	Rep. Mobley Rep. Jones Rep. Parmon Rep. Womble
HB 1249	Deep Vein Thrombosis Awareness Month.	Rep. England Rep. Harrell
SB 1216	Extend Emergency Foreclosure Program.	Sen. Blue

Adjournment

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Edward C. LeCarpentier III	Lawyers Insurance Agency
JE Powell	AOC
Lisa Martin	NC Home Builders
Jessi Hayes	↓
Colby Thomas	NC Assn. REALTORS
Bill Patterson	NC Life & Health Guaranty Association
Lowell Miller	" "
Julie Hochsztein	Retirement Systems Division
David Starling	NC DST
Paul Meyer	NCLM
BRIAN DEMBBY	MWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Betty Turner	Buddy America
Paul Stock	NCBA
Henry Jones	Attorney - Raleigh
Kim Crowd	NCBA
Daniel Blum	Troutman Sanders
Susan Kemp Cole	NC Assn. of COGs
[illegible]	SD, ALPA
Margaret Matrone	NCHFA
Bob Kucab	NCHFA
[illegible]	Poyner & Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 1, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sara Weed	CRL
Courtney Choi	" "
John Polimeno	NCAOA
Ann Mole	DVLC

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
McNeil Chestnut	For the Comm. Bks.
Will Corbett	NCCOB
[illegible]	NMRS
Bill Dowe	NC Justice Center
Chris Kidda	CMC
Mark Peace	NCCOB
D. Ambrose	Electricity
A Kirby	NC JC
Phil Lehman	NC AGO
Rose Williams	NC DOI
TED HAMBY	NC DOI

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 766*
Committee Substitute Favorable 4/15/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H766-CSTG-39 [v.3]

5/25/2010 3:50:20 PM

Short Title: Annuity Insolvency Coverage/Ins. Guar. Assn. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROTECTION PROVIDED BY THE NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION AGAINST FAILURE IN THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS UNDER ANNUITY CONTRACTS BECAUSE OF THE DELINQUENCY OF THE MEMBER INSURER THAT ISSUED THE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-21(d)(5) reads as rewritten:

"(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

...

(5) With respect to any one ~~contract holder~~ payee (or beneficiaries of one payee if the payee is deceased) of a structured settlement annuity, one million dollars ($1,000,000) for all benefits, including cash values."

SECTION 2. G.S. 58-62-21(e) is repealed.

SECTION 3. This act is effective when it becomes law and applies to claims submitted to the North Carolina Life and Health Insurance Guaranty Association on or after August 7, 2009.

HOUSE BILL 766:
Annuity Insolvency Coverage/Ins. Guar. Assn.

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 28, 2010
Introduced by:	Reps. Womble, Parmon, Mobley, Jones	**Prepared by:**	Bill Patterson Committee Counsel, House Insurance
Analysis of:	PCS to Second Edition H766-CSTG-39		

SUMMARY: ***For insolvencies involving issuers of structured settlement annuities, the PCS would apply the existing $1,000,000 coverage limit on a "per payee" basis rather than a "per contract holder" basis, and for insolvencies involving issuers of all other annuities, would eliminate the current lifetime aggregate coverage limit of $500,000.***

[As introduced, this bill was identical to S411, as introduced by Sen. Brunstetter, which was ratified as S.L. 2009-109]

CURRENT LAW: The North Carolina Life and Health Insurance Guaranty Association ("the Association") is a statutory entity comprising all insurers licensed to sell life insurance, accident and health insurance, and annuities in the state of North Carolina. Under the Life and Health Insurance Guaranty Association Act[1] ("Guaranty Association Act"), the Association provides protection, up to specified coverage limits, to North Carolina residents who are holders of individual annuities issued by an insolvent insurer.

In 2009, G.S. 58-62-21(d)(5) was amended to provide protection in the event of insolvency involving issuers of annuities used to fund structured settlements of claims involving personal injury or illness, including claims under the Workers Compensation Act.[2] As amended, the Guaranty Association Act provided coverage for insolvencies involving structured settlement annuities of up to $1,000,000 "per contract holder."

In addition, the 2009 amendments increased from $300,000 to $500,000 the aggregate limit of coverage for any one individual in the case of insolvencies of more than one issuer of annuities other than structured settlement annuities.[3]

BILL ANALYSIS: For insolvencies involving issuers of structured settlement annuities, Section 1 of the PCS rewords the $1,000,000 coverage limit in G.S. 58-62-21(d)(5) so that it applies on a "per payee" basis rather than on the existing "per contract holder" basis.

For insolvencies involving issuers of all other annuities, Section 2 of the PCS deletes the aggregate limit on coverage available to North Carolina residents imposed by G.S. 58-62-21(e). With this change, a North Carolina resident owning annuity contracts issued by more than one company will remain subject to the $300,000 coverage limit per insolvency under G.S. 58-62-21(d)(2),[4] but will not be subject to any aggregate coverage limit in the event of multiple insolvencies.

EFFECTIVE DATE: The act is effective when it becomes law and applies to any claims submitted to the Association on or after August 7, 2009, the effective date of the 2009 amendments to the statute.

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[1] Article 62 of Chapter 58 of the General Statutes.
[2] S.L. 2009-448, s. 3.
[3] S.L. 2009-448, s. 4.
[4] Although this limit is stated as applying "with respect to any one individual," the Association interprets it as applying "per insolvency," according to information provided by the Association to Staff.

BACKGROUND: Unlike ordinary annuity contracts, the "holder" of a structured settlement annuity contract is not the payee, but rather is usually a subsidiary of the annuity issuer that holds thousands of other contracts issued by the same insurer. For this reason, a coverage limit of $1,000,000, if applied on a "per contract holder" basis, would be split among all of the contracts held by the contract holder, and would provide only a small fraction of the $1,000,000 coverage limit to persons who are the payees under structured settlement annuities issued by the insolvent insurer.

The Insurance Guaranty Association does not track the amount that any individual annuity payee may have recovered under separate insolvencies to determine when and if this cap has been reached. As a result, there is no way to enforce the aggregate lifetime limit of coverage for insolvencies involving issuers of a non-structured settlement annuities set forth in G.S. 58-62-21(e). The Association has therefore proposed its repeal.

H766-SMTG-76(CSTG-39) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1249
PROPOSED SENATE COMMITTEE SUBSTITUTE H1249-CSMC-27 [v.1]

5/19/2010 11:13:48 AM

Short Title: Homebuilder Property Tax Deferral Change. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INVENTORY PROPERTY TAX DEFERRAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.1D(a) reads as rewritten:

"(a) Classification. – A residence ~~owned and~~ constructed by a builder and owned by the builder or a business entity of which the builder is a member, as defined in G.S. 105-277.2, 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, renovating, 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."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010.

HOUSE BILL 1249:
Homebuilder Property Tax Deferral Change

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 1, 2010
Introduced by:	Reps. Harrell, England	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition H1249-CSMC-27		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1249 clarifies that a property tax deferral program passed in 2009 that applies to residences constructed by general contractors also applies to builders who are members of specified business entities.***

CURRENT LAW: S.L. 2009-308 created a property tax deferral program for an occupant-ready residence constructed and owned by a general contractor for resale on a parcel of real property. The amount of property tax liability that could be deferred is 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 would 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 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 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. 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.

Because of the language in S.L. 2009-308, some counties and the Department of Revenue have determined that an applicant does not qualify for the tax deferral program if the builder is not also the entity that holds title to the property (this mostly affects those situations where the builder has an LLC or other business entity act as title owner and the builder builds under a different name).

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1249 would clarify that a builder who builds as a general contractor in his own name can still qualify for the deferral program passed in S.L. 2009-308 even if he then transfers the property to a business entity of which he is a member.

EFFECTIVE DATE: The act would be effective for taxes imposed for taxable years beginning on or after July 1, 2010.

Heather Fennell and Dan Ettefagh contributed to this summary.

H1249-SMSU-157(CSMC-27) v1

Senate Commerce Committee
Tuesday, June 8, 2010
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met on Tuesday, June 8, 2010 at 11:00 a.m. in Room 1027 of the Legislative Building, and 20 members of the Committee were in attendance.

Pages assisting with the meeting were: Andres Ainolhayat, Fayetteville, sponsored by Senator Shaw; Shelby Andrews, Whitsett, and Carson Easter, Julian, sponsored by Senator Tillman; Jake Froelich, Greensboro, sponsored by Senator Vaughn; Regina Parker, Chapel Hill, sponsored by Senator Kinnaird; Toni Selby, Manteo, sponsored by Senator Basnight; Rycal Simmons-Blount, Greensboro, sponsored by Senator Dorsett; Emoni Tedder, Durham, sponsored by Senator McKissick; and Robert Wright, Raleigh, sponsored by Senator Blue.

Senator Soles stated that the first order of business would be to consider S.B. 1216, Extend Emergency Foreclosure Program sponsored by Senator Blue. Senator Soles recognized Senator Blue who moved for adoption of the Committee Substitute bill for discussion purposes and to explain the Committee Substitute bill. Motion carried. Upon the conclusion of Senator Blue's remarks, Senator Soles recognized Mark Pearce, Chief Deputy Commissioner of Banks, to answer questions from committee members.

Following Mr. Pearce's comments, Senator Blue and Senator McKissick moved for a favorable report of the committee substitute bill. Motion carried. Senator Soles re-referred the Committee Substitute bill to the Finance Committee.

The meeting adjourned at 11:25 a.m.

Senator R. C. Soles, Jr., Chairman

Ramona Fitzgerald, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 08, 2010

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

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

S.B. **1216** Extend Emergency Foreclosure Program.

Draft Number:	PCS 35464-RO-110
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, June 08, 2010
11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1216	**Extend Emergency Foreclosure Program**	**Senator Blue**

Presentations

Other Business

Adjournment

PAGES ATTENDING

Date: 6-8

Committee: Commerce **Room:** 1027LB 11 AM

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Page Name	Hometown	Sponsoring Senator
1 ~~Michael Wohlers~~ Robert Wright	Raleigh	Sen. ~~Stein~~ Blue
2 Regina Parker	Chapel Hill	Kinnaird
3 Emoni Tedder	Durham	Sen. McKissick
4 Rycal Blount	Greensboro	Sen. Katie Dorsett
5 Sheiny Andrews	whitsett	Tillman
6 Carson Easter	Julian	Tillman
7 Toni Selby	Manteo	Basnight
8 Annihite Andres Aiyallaya	Fayetteville	Sen. Shaw
9 JAKE FROELICH	GREENSBORO	VAUGHN

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VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Fagleman	Inform Inc.
Dick Carlton	atty
Phil Lehman	NC AGO
Andy Lancaster	NCNN
Amy K.	H&W
Lauren Maley	NCCUL
Emile Sutton	IDA & Asset Bldg Collaborative
Carley Ruff	NC Housing Coalition
Will Pann Hice	NCHFA
Sara Weed	CRL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Alisa Garvey	NC COB
Paul Stark	NCNA
PE Powell	AOC
PAIGE WORSHAM	SCHOOL OF GOVERNMENT
Christine Wunsche	SOG / Daily Bulletin
Kay Emanuel	School of Government
Bridgit Jones	Pfizer
Marlowe Foster	Pfizer
Brian Dempsey	McGuire Woods
CAROLINE HOWE	GOVERNOR'S OFFICE
Alena Pugh	Sen Shaw Office

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cors	TNC
Lean Bradshaw	TNC
Kim Crouch	NC Bar Assn
Weatherly Rose	Hunton + Williams
Chris Kucia	
Will Corbett	NCCOB
McNeil Chestnut	For the Comm Bks.
ANN LOVE	DUKE
Amy McConkey	NC Bev Assoc
	NCRMA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	TSS
Daniel Baum	Troutman Sanders
Susan Valaur	NW
AL Ripley	NC J. Ctr
[illegible]	NMRS
Tommy Jones	Attorney Raleigh
[illegible]	NCFA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1216
PROPOSED COMMITTEE SUBSTITUTE S1216-CSRO-110 [v.1]

5/28/2010 4:50:14 PM

Short Title: Extend Emergency Foreclosure Program. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"§ 45-100. (For expiration date, see note) Title.

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

"§ 45-101. (For expiration date, see note) Definitions.

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

~~(1a) Annual percentage rate. – Defined in G.S. 24-1.1F.~~

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage

or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

~~(3a) Rate spread home loan. – A home loan in which all the following apply:~~

~~a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~(4) Subprime loan. A loan, originated on or after January 1, 2005, but before December 31, 2007, that meets the definition of a rate spread home loan under this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act.~~"

"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for ~~subprime~~ home loans.

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of ~~subprime~~ home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.

(2) An itemization of any other charges that must be paid in order to bring the loan current.

(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

(6) The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of Banks."

"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the Administrative Office of the Courts for ~~certain subprime~~ home loans.

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional information requested shall be determined in connection with the design of the database established by subsection (c) of this section. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable."

~~(c) No later than October 1, 2008, the Administrative Office of the Courts shall establish an internal database to track information provided in this section. The Commissioner of Banks shall design and develop this database, in consultation with the Administrative Office of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have access to the database."~~

"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention ~~Project.~~ Project and Fund.

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input from HUD-approved housing counselors, community organizations, state agencies, mortgage lenders, mortgage servicers, and other partners.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Office of the Commissioner of Banks. The funds shall be held separate from any other funds received by the Office of the Commissioner of Banks in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by the act. The collection of this fee shall be managed by the Office of the Commissioner of Banks in a manner so as to minimize burdens on mortgage servicers in complying with the requirements of this section.

(d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure Prevention Trust Fund to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of Banks, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers;

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse non-profit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project;

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse non-profit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loan;

(4) Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project shall be directed to the North Carolina Housing Trust Fund.

(e) The Commissioner of Banks shall have the discretion to enter into an agreement to administer funds under subsection (d)(2) and (3) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

"§ 45-105. (For expiration date, see note) Extension of foreclosure process.

The Commissioner of Banks shall review information provided in the database created by G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid

foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts."

"§ 45-106. (For expiration date, see note) Use and privacy of records.

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

"§ 45-107. (For expiration date, see note) Foreclosure filing.

(a) For the duration of the program authorized by this Article, foreclosure notices filed on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding."

SECTION 2. G.S. 45-21.16(c2) reads as rewritten:

"(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15, 2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b) the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), or if the loan is a ~~subprime~~ home loan under ~~G.S. 45-101(4),~~

G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. This act becomes effective November 1, 2010, and expires on May 31, 2013.

SENATE BILL 1216:
Extend Emergency Foreclosure Program

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 31, 2010
Introduced by:	Sen. Blue	**Prepared by:**	Karen Cochrane-Brown Committee Counsel
Analysis of:	PCS to First Edition S1216-CSRO-110		

SUMMARY: The Proposed Committee Substitute for Senate Bill 1216 would amend the Emergency Program to Reduce Home Foreclosures Act by making the act applicable to all home loan foreclosures, rather than just certain subprime loans. The bill would also create the State Home Foreclosure Prevention Trust Fund, and extend the expiration date of the Program until May 31, 2013.

CURRENT LAW:

S.L. 2008-226 created an "Emergency Program to Reduce Home Foreclosures". The program established a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure and submit information on those loans to a database housed within the Administrative Office of the Courts (AOC). The Commissioner of Banks uses the information from the database to attempt to find solutions for homeowners to avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days in appropriate cases.

The act directed the Commissioner of Banks to use $600,000 of the funds available to the State Banking Commission for grants to nonprofit counseling agencies, and to use $400,000 from the State Banking Commission to design and operate the foreclosure reduction program. The Office of Commissioner of Banks was directed to report to the General Assembly on the operation of the program by May 1 of each year until the funds were expended. The act became effective November 1, 2008, and will expire on October 31, 2010.

BILL ANALYSIS:

SB 1216 amends the Emergency Program to Reduce Home Foreclosures Act by eliminating the restrictions on the types of loans subject to the act. Currently, the program only applies to subprime home loans that were originated between January 1, 2005 and December 31, 2007. This bill would make the act applicable to all home loans in the State in which the borrower is facing foreclosure.

The bill would also create the State Home Foreclosure Prevention Trust Fund, to be managed and maintained by the Commissioner of Banks. The bill provides that upon filing the information required for the database, the mortgage servicers would be required to pay a fee of $75.00 to the Fund. The fee could only be charged once for a home loan covered by the act. In administering the Fund, the Commissioner must allocate the money as follows:

- No more than the greater of $2,200,000 or 30% of the funds per year may be used for administrative costs to operate the program.
- No more than the greater of $3,400,000 or 40% per year may be used to make grants to or to reimburse non-profit housing counseling agencies that provide foreclosure prevention counseling services to homeowners.

- No more than 30% of the total funds collected each year may be used to make grants to or to reimburse non-profit legal service providers for services rendered on behalf of homeowners facing foreclosure.
- Any funds remaining after the expiration of the program shall be directed to the North Carolina Housing Trust Fund.

The Commissioner is also given discretion to enter agreements with other State and federal programs aimed at foreclosure prevention.

EFFECTIVE DATE: The act would become effective November 1, 2010, and expire on May 31, 2013.

S1216-SMRO-164(CSRO-110) v1

SENATE BILL 1216

Short Title:	Extend Emergency Foreclosure Program.	(Public)
Sponsors:	Senators Blue; and Atwater.	
Referred to:	Commerce.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"§ 45-100. (For expiration date, see note) Title.

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

"§ 45-101. (For expiration date, see note) Definitions.

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

~~(1a) Annual percentage rate. – Defined in G.S. 24-1.1F.~~

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of

trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

~~(3a) Rate spread home loan. A home loan in which all the following apply:~~

~~a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~(4) Subprime loan. A loan, originated on or after January 1, 2005, but before December 31, 2007, that meets the definition of a rate spread home loan under this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks~~

~~for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act.~~"

"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for ~~subprime~~ home loans.

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of ~~subprime~~ home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.

(2) An itemization of any other charges that must be paid in order to bring the loan current.

(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

(6) The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of Banks."

"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the Administrative Office of the Courts for ~~certain subprime~~ home loans.

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional information requested shall be determined in connection with the design of the database established by subsection (c) of this section. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable."

~~(c) No later than October 1, 2008, the Administrative Office of the Courts shall establish an internal database to track information provided in this section. The Commissioner of Banks shall design and develop this database, in consultation with the Administrative Office of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~"

"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention ~~Project.~~ Project and Fund.

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input

from HUD-approved housing counselors, community organizations, state agencies, mortgage lenders, mortgage servicers, and other partners.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Office of the Commissioner of Banks. The funds shall be held separate from any other funds received by the Office of the Commissioner of Banks in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once in a 12-month period for a home loan covered by the act. The collection of this fee shall be managed by the Office of the Commissioner of Banks in a manner so as to minimize burdens on mortgage servicers in complying with the requirements of this section.

(d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure Prevention Trust Fund to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of Banks, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers;

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse non-profit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project;

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse non-profit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loan;

(4) Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project shall be directed to the North Carolina Housing Trust Fund.

(e) The Commissioner of Banks shall have the discretion to enter into an agreement to administer funds under subsection (d)(2) and (3) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

"§ 45-105. (For expiration date, see note) Extension of foreclosure process.

The Commissioner of Banks shall review information provided in the database created by G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the

allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts."

"§ 45-106. (For expiration date, see note) Use and privacy of records.

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

"§ 45-107. (For expiration date, see note) Foreclosure filing.

(a) For the duration of the program authorized by this Article, foreclosure notices filed on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding."

SECTION 2. G.S. 45-21.16(c2) reads as rewritten:

"(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15, 2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b) the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), or if the loan is a ~~subprime~~ home loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other

county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. This act becomes effective November 1, 2010, and expires on May 31, 2013.

SENATE BILL 1216:
Extend Emergency Foreclosure Program

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	May 31, 2010
Introduced by:	Sen. Blue	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to First Edition S1216-CSRO-110		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 1216 would amend the Emergency Program to Reduce Home Foreclosures Act by making the act applicable to all home loan foreclosures, rather than just certain subprime loans. The bill would also create the State Home Foreclosure Prevention Trust Fund, and extend the expiration date of the Program until May 31, 2013.

CURRENT LAW:

S.L. 2008-226 created an "Emergency Program to Reduce Home Foreclosures". The program established a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure and submit information on those loans to a database housed within the Administrative Office of the Courts (AOC). The Commissioner of Banks uses the information from the database to attempt to find solutions for homeowners to avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days in appropriate cases.

The act directed the Commissioner of Banks to use $600,000 of the funds available to the State Banking Commission for grants to nonprofit counseling agencies, and to use $400,000 from the State Banking Commission to design and operate the foreclosure reduction program. The Office of Commissioner of Banks was directed to report to the General Assembly on the operation of the program by May 1 of each year until the funds were expended. The act became effective November 1, 2008, and will expire on October 31, 2010.

BILL ANALYSIS:

SB 1216 amends the Emergency Program to Reduce Home Foreclosures Act by eliminating the restrictions on the types of loans subject to the act. Currently, the program only applies to subprime home loans that were originated between January 1, 2005 and December 31, 2007. This bill would make the act applicable to all home loans in the State in which the borrower is facing foreclosure.

The bill would also create the State Home Foreclosure Prevention Trust Fund, to be managed and maintained by the Commissioner of Banks. The bill provides that upon filing the information required for the database, the mortgage servicers would be required to pay a fee of $75.00 to the Fund. The fee could only be charged once for a home loan covered by the act. In administering the Fund, the Commissioner must allocate the money as follows:

- No more than the greater of $2,200,000 or 30% of the funds per year may be used for administrative costs to operate the program.
- No more than the greater of $3,400,000 or 40% per year may be used to make grants to or to reimburse non-profit housing counseling agencies that provide foreclosure prevention counseling services to homeowners.

- No more than 30% of the total funds collected each year may be used to make grants to or to reimburse non-profit legal service providers for services rendered on behalf of homeowners facing foreclosure.
- Any funds remaining after the expiration of the program shall be directed to the North Carolina Housing Trust Fund.

The Commissioner is also given discretion to enter agreements with other State and federal programs aimed at foreclosure prevention.

EFFECTIVE DATE: The act would become effective November 1, 2010, and expire on May 31, 2013.

S1216-SMRO-164(CSRO-110) v1

SENATE BILL 1216

Short Title:	Extend Emergency Foreclosure Program.	(Public)
Sponsors:	Senators Blue; and Atwater.	
Referred to:	Commerce.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"§ 45-100. (For expiration date, see note) Title.

This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.

"§ 45-101. (For expiration date, see note) Definitions.

The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

~~(1a) Annual percentage rate. – Defined in G.S. 24-1.1F.~~

(1b) Home loan. – A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of

trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

~~(3a) Rate spread home loan. – A home loan in which all the following apply:~~

~~a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

~~b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~

~~(4) Subprime loan. – A loan, originated on or after January 1, 2005, but before December 31, 2007, that meets the definition of a rate spread home loan under this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks~~

~~for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act.~~"

"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for ~~subprime~~ home loans.

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of ~~subprime~~ home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.

(2) An itemization of any other charges that must be paid in order to bring the loan current.

(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

(6) The address, telephone number, and other contact information for the consumer complaint section of the Office of Commissioner of Banks."

"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the Administrative Office of the Courts for ~~certain subprime~~ home loans.

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional information requested shall be determined in connection with the design of the database established by subsection (c) of this section. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable."

~~(c) No later than October 1, 2008, the Administrative Office of the Courts shall establish an internal database to track information provided in this section. The Commissioner of Banks shall design and develop this database, in consultation with the Administrative Office of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have access to the database.~~"

"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention ~~Project.~~ Project and Fund.

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for ~~certain subprime~~ home loans. In developing the Project, the Commissioner may include input

from HUD-approved housing counselors, community organizations, state agencies, mortgage lenders, mortgage servicers, and other partners.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Office of the Commissioner of Banks. The funds shall be held separate from any other funds received by the Office of the Commissioner of Banks in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once in a 12-month period for a home loan covered by the act. The collection of this fee shall be managed by the Office of the Commissioner of Banks in a manner so as to minimize burdens on mortgage servicers in complying with the requirements of this section.

(d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure Prevention Trust Fund to implement the purposes of this act in the following ~~manner~~:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Office of the Commissioner of Banks, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers;

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse non-profit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project;

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse non-profit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loan;

(4) Any funds remaining upon the expiration of the State Home Foreclosure Prevention Project shall be directed to the North Carolina Housing Trust Fund.

(e) The Commissioner of Banks shall have the discretion to enter into an agreement to administer funds under subsection (d)(2) and (3) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

"§ 45-105. (For expiration date, see note) Extension of foreclosure process.

The Commissioner of Banks shall review information provided in the database created by G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Commissioner shall have the authority to extend one time under this Article the

allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to this section, the Commissioner shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts."

"§ 45-106. (For expiration date, see note) Use and privacy of records.

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

"§ 45-107. (For expiration date, see note) Foreclosure filing.

(a) For the duration of the program authorized by this Article, foreclosure notices filed on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding."

SECTION 2. G.S. 45-21.16(c2) reads as rewritten:

"(c2) **(Expires October 31, 2010)** In any foreclosure filed on or after ~~November 15, 2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b) the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v) that the underlying mortgage debt is not a ~~subprime~~ home loan as defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), or if the loan is a ~~subprime~~ home loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other

county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. This act becomes effective November 1, 2010, and expires on May 31, 2013.

SENATE COMMERCE COMMITTEE
Tuesday, June 22, 2010 at 11:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 AM on June 22, 2010, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles presided. Anna Hawksworth, Hannah Lee, and Yash Mehta of Raleigh, Andrew Harris of Gastonia, Will McGuire of Eden, Marquenette Fuller of Manteo, Taylor Mahaffey of Belmont, Katelyn Stiles of Bessemer City, and Sierra Croft of Cherryville served as pages.

S.B. 1338 – Fire Safe Cigarettes

Senator Purcell was recognized to explain the bill, which amends the Fire-Safety Standard and Firefighter Protection Act. It provides that the $250 fee paid to the Commissioner by manufacturers under the Act is paid for each "brand style" and not for each certification form. Under current law, manufacturers must submit in certification form describing the cigarette, including the style of the cigarette. The bill also adds a definition of "brand style" to define the term as "a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration of the cigarette, or packaging." Rose Vaughn Williams, the Department of Insurance's legal counsel, was recognized to answer questions. Senator McKissick moved for a favorable report and to refer the bill to the Finance Committee. The motion carried. A copy of the bill and the summary is attached.

H.B. 1907 – Confirm Lucy Allen

Senator Hoyle was recognized to explain the bill, which is a joint resolution providing for the confirmation of the appointment of Lucy T. Allen to the Utilities Commission. Ed Finley, Chair of the Utilities Commission, was recognized. He stated that he was already impressed with Commissioner Allen's knowledge and background. He also took that time to recognize the Utilities Commission's member in attendance (Lorenzo Joyner, Bill Culpepper, Susan Rabon, Bryan Beatty and Tenola Brown-Bland). Commissioner Allen was recognized. She said that she was thankful for her eight years in the legislature, honored by the appointment and thanked the Governor. Senator Doug Berger commended Commissioner Allen, Senator McKissick outlined her remarkable character and intellectual skills, and Senator Graham commented on her reputation. Senator Dickson stated that it was a "tremendous honor and pleasure" to move for a favorable report. Senator Doug Berger seconded the motion and the motion carried. A copy of the bill, the summary, Commissioner Allen's biography, her Statement of Economic Interest and the State Ethics Commission evaluation is attached.

Senator Jenkins was recognized to offer the report of the subcommittee on House Bill 912 – Military Contractors. The subcommittee recommended that H.B. 912 be placed in a study bill. A copy of the subcommittee's report is attached.

The meeting adjourned at 11:24 AM.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 22, 2010

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

FAVORABLE

S.B.	**1338**	Fire Safe Cigarettes.	
		Sequential Referral:	None
		Recommended Referral:	Finance
H.JR.	**1907**	Confirm Lucy Allen.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

HJR 1907 – Sen. Hoyle or Sen. Soles

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 22, 2010	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1338	Fire Safe Cigarettes. Confirm Lucy Allen to Utilities Comm.	Senator Purcell

Senator R. C. Soles, Jr., Chair

Senate Commerce Committee
Tuesday, June 22, 2010, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1907	Confirm Lucy Allen.	Rep. Coates
SB 1338	Fire Safe Cigarettes.	Sen. Purcell

Adjournment

PAGES ATTENDING

Date: 6-22

Committee: Commerce **Room:** 1027 11AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Anna Hawksworth	Raleigh	Hunt
2 Hannah Lee	Raleigh	Hunt
3 Andrew Harris	Gastonia	Hoyle
4 Will McGirt	Eden	Berger
5 Yash Mehta	Raleigh	Hunt
6 Marquenette Fuller	Manteo	Basnight
7 Taylor Mahaffey	Belmont	Hoyle
8 Katelyn Stiles	Bessemer City	Hoyle
9 Sierra Croft	Cherryville	Hoyle

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the eting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Payne Strategies
[signature]	NCRPA
Will Culpepper	MVA
[signature]	Dominion
Whitney Campbell	Jordan Price
Connor Hanly	Electricities of NC
Joyce Peters	JPAssoc
Barbara Conaldi	BRCG
Penny Griffin	School of Gov.
Brian Dempsey	NWC
Joe Lanier	Nelson Mullins
Zeb Alley	" "

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Bo Somers	Duke Energy
Ron Kaylor	Kaylor Law Firm
Rob Lamm	PLA
Deanna Kemmerer	NCUC Public Staff
Leslie Merritt	FEPS
Lou Anthony	Progress Energy
Ridley Wellborn	HLC-Inc
Donna Hurdle	HLC-Inc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ehrick Sotengco	Nationwide Ins.
Sherman McCoy	Nationwide
Molly Diggins	Sierra Club
Fran Piercy	Ragsdale Liggett
Gene Ainsworth	A&A
Ken Melton	K.M.A.
Mac Ellis	Utilities Commission
Mark Bacon	[illegible]
Patrick Buffkin	NCAEC
Robert Hinson	Public Staff
Kathy Hawkins	Duke Energy

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Robinson	NCRMA
Carolyn Jones Connor	Catawba Co. League of Women Voters
Sarah Huffman	League of Women Voters of Catawba County
John Hardin	MFAS
John McMillan	MFAS
Susan Valaam	NW
John Merritt	MMC
Daniel Baum	Troutman Sanders
Pat O'Connell	Fuss Solutions
Bill Culpepper	NC Utilities Commission
Berry Newson	SEL

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

June 22, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
TROY SHELTON	DURHAM
Sharon Miller	CUCA
Matthew Eisley	Smith Anderson
Damon Circosta	NC Vote ED
Michelle Frazier	MFTS
Jane Pinsey	NCCLCR

SENATE BILL 1338*

Short Title:	Fire Safe Cigarettes.	(Public)
Sponsors:	Senator Purcell.	
Referred to:	Commerce.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FIRE-SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, AS RECOMMENDED BY THE PUBLIC HEALTH STUDY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-92-10 reads as rewritten:

"**§ 58-92-10. Definitions.**

For the purposes of this Article:

(1) "Agent" means any person authorized by the Department of Revenue to pay the excise tax on packages of cigarettes.

(1a) "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(2) "Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, other than leaf tobacco.

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes.

(5) "Distributor" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person, or a distributor as defined in G.S. 105-113.4(3)a.

(6) "Manufacturer" means:

a. Any entity ~~which~~ that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that ~~such~~ the manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

b. The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

c. Any entity that becomes a successor of an entity described in sub-subdivision a. or b. of this subdivision.

(7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in G.S. 58-92-15(g) for all test trials used to certify cigarettes in accordance with this Article.

(8) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.

(9) "Retail dealer" means any person, other than a manufacturer or distributor, engaged in selling cigarettes or tobacco products.

(10) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(11) "Sell" means to sell, or to offer or agree to do the same."

SECTION 2. G.S. 58-92-20 reads as rewritten:

"**§ 58-92-20. Certification and product change.**

(a) Each manufacturer shall submit to the Commissioner a written certification attesting both of the following:

(1) Each cigarette listed in the certification has been tested in accordance with G.S. 58-92-15.

(2) Each cigarette listed in the certification meets the performance standard set forth in G.S. 58-92-15.

(b) Each cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package.

(2) ~~Style, such as light or ultralight.~~ Brand style, as defined in G.S. 58-92-10(1a).

(3) Length in millimeters.

(4) Circumference in millimeters.

(5) Flavor, such as menthol or chocolate, if applicable.

(6) Filter or nonfilter.

(7) Package description, such as soft pack or box.

(8) Marking pursuant to G.S. 58-92-25.

(9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.

(10) The date that the testing occurred.

(c) Certifications shall be made available to the Attorney General for purposes consistent with this Article and the Commissioner for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be recertified every three years.

(e) For each ~~certification form,~~ brand style listed in a certification, a manufacturer shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00). The Commissioner may annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this Article.

(f) - There is established in the State treasury a separate, nonreverting fund to be known as the "Fire Safety Standard and Firefighter Protection Act Enforcement Fund." The fund shall consist of all certification fees submitted by manufacturers and shall, in addition to any other monies made available for such purpose, be available to the Commissioner solely to support processing, testing, enforcement, and oversight activities under this Article.

(g) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Article, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in G.S. 58-92-15 and maintains records of that retesting as required by G.S. 58-92-15. Any altered cigarette ~~which~~ that does not meet the performance standard set forth in G.S. 58-92-15 ~~may~~ shall not be sold in this State."

SECTION 3. This act becomes effective July 1, 2010.

SENATE BILL 1338:
Fire Safe Cigarettes

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 21, 2010
Introduced by:	Sen. Purcell	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1338 amends the Fire-Safety Standard and Firefighter Protection Act to provide that the $250 fee paid to the Commissioner by manufacturers under the Act is paid for each "brand style" and not for each certification form. Under current law, manufacturers must submit a certification form describing the cigarette, including the style of the cigarette.***

The bill also adds a definition of "brand style" to define the term as "a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration of the cigarette, or packaging."

The bill is a recommendation of the Public Health Study Commission.

[As introduced, this bill was identical to H1905, as introduced by Reps. Insko, England, which is currently in House Finance.]

EFFECTIVE DATE: Senate Bill 1338 becomes effective July 1, 2010.

BACKGROUND: The Fire-Safety Standard and Firefighter Protection Act was enacted by the General Assembly in 2007 and adopted a cigarette fire-safety standard to be applied to cigarettes sold in the State. The Act requires all cigarettes sold in North Carolina to be made with a special type of paper that slows the rate at which the cigarette burns to lessen the risk of a cigarette igniting bedding or other surfaces.

S1338-SMRG-113(e1) v1

H 1

HOUSE JOINT RESOLUTION 1907*

Sponsors:	Representatives Coates; Faison, Harrison, Hughes, Lucas, May, McLawhorn, and Tarleton.
Referred to:	Public Utilities.

May 20, 2010

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF LUCY T. ALLEN TO THE UTILITIES COMMISSION.

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

Whereas, a vacancy has occurred on the North Carolina Utilities Commission due to the resignation of Robert V. Owens, Jr.; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of Lucy T. Allen to serve the remainder of the term expiring June 30, 2013, caused by the resignation of Robert V. Owens, Jr.; Now, therefore,

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

SECTION 1. The appointment of Lucy T. Allen to the North Carolina Utilities Commission for the remainder of the term of Robert V. Owens, Jr., expiring June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 1907: Confirm Lucy Allen

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	June 22, 2010
Introduced by:	Rep. Coates	**Prepared by:**	Heather Fennell
Analysis of:	First Edition		Committee Counsel

SUMMARY: HJR 1907[1] confirms the appointment of Lucy T. Allen to the Utilities Commission. Ms. Allen was appointed by Governor Easley to fill the vacancy on the Utilities Commission created by the resignation of Commissioner Robert V. Owens, Jr.. This term expires June 30, 2013. Confirmation by the General Assembly of Utilities Commission appointments made by the Governor is required by G.S. 62-10. The resolution is effective upon ratification. A biographical narrative and a Statement of Economic Interest filed with the State Ethics Commission are before this Committee, together with the evaluation letter from the Ethics Commission. The Governor's letter of appointment is also before the Committee.

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

A Utilities Commissioner is presently paid a salary of $123,198.00 annually. There are fixed salary augmentations based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. A Commissioner may not engage in any other employment, business, profession or vocation. G.S. 62-10(i) provides, in part: "*Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.*" During the term of office, a Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies that the Commission carries out, usually with broad discretion. Chapter 62 of the General Statutes provides that the Commission is both a regulator of public utilities, as well as a judge in all matters relating to regulated public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

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

H1907-SMTD-172(e1) v1

[1] As introduced, this bill was identical to S1290, as introduced by Sen. Hoyle, which is currently in Senate Commerce.]

COMMISSIONER LUCY T. ALLEN

Commissioner Allen was born in Louisburg, North Carolina. After attending Duke University and Meredith College, graduating from Meredith College with a BA in English, she taught middle school language arts. Subsequently, she served eight years on the Franklin County Board of Education.

Allen was Mayor of Louisburg for 16 years. Louisburg owns and operates its municipal electric system and is a member of both the Eastern Municipal Power Agency and Electricities. Allen represented Louisburg as a member of the Electricities Board of Directors and was active in Power Agency matters. She was President of the League of Municipalities (1999-2000) and active in the National League of Cities.

She was elected to the North Carolina House of Representatives in 2002 for the first of four terms. There she most recently was Chairman of the Environment Committee for two terms.

Governor Beverly Perdue appointed Allen to the North Carolina Utilities Commission on April 12, 2010 to fill a term that expires on June 30, 2013.

Allen is active in many community, civic and public service roles. She has three sons: Sonny, Hill and Stuart; two daughters-in-law, Willa and Julie; three grandsons: Felix, Henry and Parker; and a dog named Hunter.

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

March 29, 2010

The Honorable Beverly E. Perdue
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

via e-mail

Re: Evaluation of Statement of Economic Interest Filed By **The Honorable Lucy T. Allen**
Prospective Appointee - North Carolina Utilities Commission

Dear Governor Perdue:

I am in receipt of Representative Lucy T. Allen's March 29, 2010, Statement of Economic Interest as a prospective appointee to the **North Carolina Utilities Commission**. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find an actual conflict of interest or the potential for a conflict of interest.

The North Carolina Utilities Commission is responsible for regulating the rates and services of all public utilities in North Carolina, including, in part, electric, telephone, natural gas, and water. In addition, the Commission regulates, to a limited degree, electric membership corporations, small power producers and electric merchant plants, and administers programs to ensure the safety of natural gas pipelines. The Commission also conducts hearings, issues orders, and investigates complaints and incidents involving public utilities.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action. In addition, G.S. 62-10(i) notes that the standards of judicial conduct shall apply to members of the Commission, and G.S. 62-11 states that Commissioners may not be the agent, attorney, or employee of a public utility, nor have any interest in a public utility.

It is our understanding that Representative Allen intends to resign from her position in the State House upon appointment to the Utilities Commission.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly, (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

Pursuant to G. S. 138A-15 (c): When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

Finally, the State Government Ethics Act mandates that all public servants attend an ethics and lobbying education presentation. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning this evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

Stacey A. Phipps

Stacey A. Phipps
Attorney, SEI Unit

cc: The Honorable Lucy T. Allen

Attachment: Ethics Education Flyer

2010

Statement of Economic Interest

("Long Form" For Use in 2010 only)

RECEIVED
MAR 2 9 2010
STATE ETHICS COMMISSION

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324. Keep a copy for your records. Unless stated otherwise, this is a snapshot of your interests on 12/31/09. For assistance please call 919-715-2071 or e-mail: ethics.commission@doa.nc.gov. An electronic version of this SEI and additional information about its completion are available on the Commission's website at www.ethicscommission.nc.gov.

CONTACT INFORMATION

Name of Person Filing: LUCY T. ALLEN

Preferred Mailing Address[1]: 312 N. MAIN ST. LOUISBURG, NC 27549

Job Title/Employer: NC REP. NCGA Eff. date of state position if applicable: 2010

Daytime Phone Number: 919-496-5111

E-Mail Address: LWTA312@AOL.COM

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all State boards covered by the Ethics Act (a list of covered boards is available at: www.ethicscommission.nc.gov) on which you are serving or to which you are being considered for appointment: NORTH CAROLINA UTILITIES COMMISSION

Please provide the following information concerning your spouse and other members of your immediate family RESIDING IN YOUR HOUSEHOLD.[2] If the information requested does not apply, please indicate "none."

Full Name[3]	Relationship	Occupation/Employer	Nature of Business
NONE			

[1] With the exception of judicial officers (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

[3] Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a judicial supplement form available on the Commission's website.

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of 12/31/09 unless another time period is specified in the question.

- **Do not list the value of those assets or liabilities.**
- **Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.**

REAL ESTATE

1. Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more? ☑Yes ☐No If so, please list below.

Owner of Real Estate	Location by County and City	% Ownership Interest
LUCY T. ALLEN	FRANKLIN - LOUISBURG	100 %
LUCY T. ALLEN	FRANKLIN - LOUISBURG	100 %
LUCY T. ALLEN	FRANKLIN - LOUISBURG	100 %

2. Do you, your spouse, or members of your immediate family rent North Carolina real estate with a market value of $10,000 or more to or from the State? ☐Yes ☒No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City

PERSONAL PROPERTY

3. Within the preceding two years, have you, your spouse, or members of your immediate family sold or bought personal property with a market value of $10,000 or more to or from the State? ☐Yes ☒No

If so, please list below and identify the State agency involved in the purchase or sale.

Identity of Purchaser	Identity of Seller	Nature and Location of Property

[4] A **"blind trust"** is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

4. Do you, your spouse, or members of your immediate family rent personal property with a market value of $10,000 or more to or from the State? ☐Yes ☒No

If so, please list below and identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). Do you, your spouse, or members of your immediate family own interests (generally stock) in a publicly owned company valued at $10,000 or more? ☐Yes ☒No If so, please list below.

▶Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.

▶Do not disclose the value of your interests.

Owner of Interest	Name of Company

5(b). Do you, your spouse, or members of your immediate family hold stock options in a publicly owned company valued at $10,000 or more? ☐Yes ☒No ☐Listed Above If so, please list below.

▶Do not disclose the value of the stock option(s).
▶You are not required to list companies already disclosed in response to 5(a).

Owner of Stock Option	Name of Company in which Option is Held

YOU MUST RESPOND TO EACH PORTION OF EACH QUESTION

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)? ☐Yes ☐No If so, please list below.

Owner of Interest	Name of Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company	Nature of Business
LUCY T. ALLEN	ALLEN BROS. LLC	-- Choose One -- MANAGER	REAL ESTATE
		-- Choose One --	
		-- Choose One --	
		-- Choose One --	
		-- Choose One --	

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
☒None or Not Known	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
☒None or Not Known	

YOU MUST RESPOND TO EACH PORTION OF EACH QUESTION

VESTED TRUSTS

7. Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*? ☐Yes ☒No

If so, please list below.

►Do not list blind trusts. Please see footnote 4 on page 2 for the definition of blind trust.

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust

LIABILITIES

8. Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness (mortgage) on your primary personal residence? ☒Yes ☐No

If so, please list below. Examples include credit card debts, auto loans, and student loans.

Name of Debtor (You, Spouse, Imm. Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
LUCY T. ALLEN	COMMERCIAL BANK

YOU MUST RESPOND TO EACH PORTION OF EACH QUESTION

II. OTHER DISCLOSURES

9. At any time during 2009, were you, your spouse or other members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes? ☑Yes ☐No

If so, provide the following information.

- **▶Do not list State boards or entities, or entities created by a political subdivision of the State.**
- **▶Do not list organizations of which you are a mere member or subscriber.**
- **▶If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.**

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business or purpose of org.	Describe State Business or State Funding
LUCY T. ALLEN TRUSTEE	LOUISBURG COLLEGE	EDUCATION	LEGISLATIVE TUITION/DISADVANTAGE STUDENT FUNDS

10. List the name of each source of income (not specific amounts) of more than $5,000 received by you, your spouse, or other members of your immediate family during 2009 if that source was not previously listed in response to questions 1-9. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, and business income. Include income from your job title/employer listed in contact information on page 1, if any. Do *not* include income received from the following sources:

- **▶ Capital gains**
- **▶ Federal government retirement**
- **▶ Military retirement**
- **▶ Social security income**

Recipient of Income	Name of Source	Business or Industry	Type of Income
LUCY T. ALLEN	NC GENERAL ASSEMBLY	GOVERNMENT	SALARY

YOU MUST RESPOND TO EACH PORTION OF EACH QUESTION

11. Are you are a practicing attorney? □Yes ☒No

If so, check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during 2009.

( ) Administrative ( ) Admiralty ( ) Corporate ( ) Criminal
( ) Decedents' Estates ( ) Environmental ( ) Insurance ( ) Labor
( ) Local Government ( ) Real Property ( ) Securities ( ) Tax
( ) Tort litigation (including negligence) ( ) Utilities regulation

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? □Yes ☒No

If so, provide the following information for those services for which you charged or were paid over $10,000 during 2009.

Type of Business	Nature of Services Rendered

13. As of December 31, 2009, were you or your employer, or your spouse or other members of your immediate family, or their employer, licensed or regulated by, or have a business relationship with, your State board or employing entity? □Yes ☒No

If so, provide the following information.

►You are not required to complete this question if you are filing because you are a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Licensing, Business or Regulatory Relationship

14. As of December 31, 2009, were you, your spouse, or other members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest in issues over which your agency or board may have jurisdiction? ☐Yes ☒No

If so, provide the following information.

► You are not required to complete this question if you are filing because you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

► Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ☐Yes ☒No

If so, please provide the following information.

Offense	Date of Conviction	County and State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying? ☐Yes ☒No

If so, and the total value of those gifts from a person or a group of persons acting together exceeds $200 per quarter, please provide the following information.

► Do not report gifts given by members of your extended family.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? ☐Yes ☒No

If so, and the value of that scholarship from a person or group of persons acting together exceeds $200, please provide the following information.

- ▶Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."
- ▶You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee. Please indicate if this is the case.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value

18. Are you or a member of your <u>immediate</u> family currently registered as a lobbyist or lobbyist principal or were you registered as such during 2009? ☐Yes ☒No

If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act? ☐Yes ☒No

If so, please provide that information.

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

**** North Carolina law establishes a fine of $250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.****

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

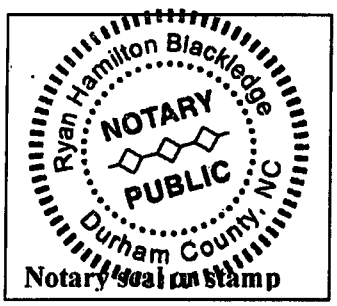
Lucy T. Allen
SIGNATURE of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF FRANKLIN

Signed and sworn to or affirmed before me this day by LUCY T. ALLEN
PRINTED NAME of Person Filing

Date: 3-29-10

Signature of Notary Public



Notary seal or stamp

Notary's printed or typed name: Ryan Hamilton Blackledge

My Commission Expires: 12/08/2013

YOU MUST RESPOND TO EACH PORTION OF EACH QUESTION

The subcommittee on House Bill 912 met last Wednesday June 16, 2010 and the motion was made and adopted to send House Bill 912 back to the full Commerce Committee with the recommendation that it be placed in a study bill.

Committee Chair,

Sen. Clark Jenkins

SENATE COMMERCE COMMITTEE
Wednesday, July 7, 2010 at 9:00 AM
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 AM on July 7, 2010, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R.C. Soles presided. Jenny Summer, Tayte Kean, Andrew Sigarto, David Torres, Nick Hall, David Chappell and Henry Pollitt of Raleigh, and Dixon Holland of Greensboro served as pages.

H.B. 1035 – UNC Performance & Payment Bond Modification

Representative Glazier was recognized to explain the bill. It increases the threshold that triggers performance and payment bonding requirements for construction project contracts awarded by The University of North Carolina. John McMillan, a lobbyist for the Surety & Fidelity Association of America, was recognized. He expressed some concern regarding the bill and offered a handout that charted bond requirements of other states. Henry Jones, a lobbyist for the Association of Mechanical Plumbing Contractors, expressed concern about the payment of subcontractors. Andrea Harris, the president of the NC Institute of Minority Economic Development, and Gloria Shealey, a board member of the National Association of Minority Contractors, spoke in favor of the bill. Greg Driver, the Director of the State Construction Office, spoke in favor of the bill and explained how it could save the State money. Dave Simpson, a lobbyist for the Carolinas Associated General Contractors, expressed concern regarding the bill. Senator Jenkins offered an amendment to raise the bond amount and moved for its adoption. The motion was favorable. Senator Jenkins offered a technical amendment that changed the effective date from July 1 to October 1, 2010. He moved for its adoption and the motion carried. Senator McKissick offered an amendment requiring that the Department of Administration report to the Governmental Operations Committee on the bill's prequalification process and moved for its adoption. The motion failed. Senator Jenkins moved to favorably report the bill as amended and the motion carried. A copy of the bill, the summary, Mr. McMillan's handout, and the amendments is attached.

The meeting adjourned at 9:36 AM.

Senator R.C. Soles, Presiding

DeAnne Mangum, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 07, 2010

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

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

H.B. **1035** UNC Performance & Payment Bond Modification.

Draft Number:	30551
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

H1035 – Sen. Jenkins

Senate Commerce Committee
Wednesday, July 7, 2010, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1035	UNC Performance & Payment Bond Modification.	Rep. Goforth Rep. Yongue Rep. McLawhorn Rep. Glazier

Adjournment

PAGES ATTENDING

Date: 7-7

Committee: Commerce **Room:** 1027 9AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Jenny Summer	Raleigh	Hunt
2 Tayte Kean	Raleigh	Hunt
3 Dixon Holland	Greensboro	Jacumin
4 Andrew Sigarto	Raleigh	Hunt
5 David Torres	Raleigh	Basnight
6 Nick Hall	Raleigh	Hunt
7 David Chappell	Raleigh	Storms
8 Henry Pollitt	Raleigh	Stein
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the eting or a Sgt. at Arms.

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 7, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valaam	Nationwide
Lor. Ann Harris	4A4A
Michelle Frazier	MF+S
John McMullan	MF+S
Henry Jones	Attorney - Raleigh
Andrea Harris	NCIMED
Dave Simpson	CATC
Ken Howell	NCSU
Daniel Baum	Troutman Sanders
David Crawford	AIANC
Johanna Reese	DOT

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 7, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Victor Bizbour	NCDOT
Carmen Hooker	Electric Cities of NC
Julia Adams	The Arc of NC
MIKE WATERS	NCRPA
Rick Zechini	NC AR
[signature]	NCBAA
DOUG HERON	Nelson Mullen
Amy Whited	NCMS
Chip Baggett	NCMS

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 7, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Shelby Mosorman Scales	NC MWBE Coordinators Network
Dwayne Pinkney	UNC
Brian Dempsey	MWC

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 7, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Anita Watkins	UNC GA
Eric Mayhew	UNC GA
Erin Schwalbach	UNC GA
Cody Inman	NCAR
Gloria Shelley	TDC
KRISTEN HESS	HH ARCHITECTURE
Jonathan Farrar	Structure Bldg Co. Inc.
KEVIN MacNAUGHTON	NC STATE UNIV.
Greg Driver	State Construction
Chris Agner	Dof Admin.
Steve Rleggon	DOA

HOUSE BILL 1035

Short Title:	UNC Performance & Payment Bond Modification.	(Public)
Sponsors:	Representatives Glazier, Goforth, McLawhorn, Yongue (Primary Sponsors); Harrison, Insko, Lucas, and Parmon.	
Referred to:	State Government/State Personnel, if favorable, Appropriations.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERFORMANCE AND PAYMENT BONDING REQUIREMENT FOR CONSTRUCTION PROJECT CONTRACTS AWARDED BY THE UNIVERSITY OF NORTH CAROLINA THAT EXCEED FIVE HUNDRED THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-26 reads as rewritten:

"**§ 44A-26. Bonds required.**

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars ($300,000), 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).~~($50,000); provided that, for The University of North Carolina and its constituent institutions, a performance and payment bond is required in accordance with this subsection if the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars ($500,000). 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.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract."

SECTION 2. This act becomes effective July 1, 2009, and applies to construction contracts awarded on or after that date.

HOUSE BILL 1035: UNC Performance & Payment Bond Modification

2009-2010 General Assembly

Committee:	Senate Commerce	**Date:**	July 7, 2010
Introduced by:	Reps. Glazier, Goforth, McLawhorn, Yongue	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1035 increases the threshold that triggers performance and payment bonding requirements for construction project contracts awarded by The University of North Carolina.***

CURRENT LAW: G.S. 44A-26 provides that a when the total construction contracts awarded for one project by a State agency or a political subdivision of the State exceeds $300,000, the contractor or construction manager at risk must provide either a performance bond or a payment bond for 100% of the construction contract amount.

BILL ANALYSIS: House Bill 1035 would increase the threshold for when a performance or payment bond is required on construction contracts let by The University of North Carolina. The threshold would be increased from $300,000 to $500,000. All other requirements related to the bonds would apply.

EFFECTIVE DATE: The act would become effective July 1, 2009 and apply to construction contracts awarded on or after that date.

H1035-SMRC-90(e1) v1

The Surety & Fidelity Association of America

100 Years of Service: 1908-2008

State Bond Thresholds

The state bond thresholds are the amounts above which bonds are required on state construction projects. In most instances, states may require bonds on contracts below the threshold.

No Threshold	Under $25,000	$25,000	$25,000-$50,000	$50,000	$75,000	$100,000	Other
Delaware	Arkansas ($20,000)	Hawaii	Kentucky ($40,000)	Alabama	Minnesota-13	Alaska California-6 Colorado	Indiana ($200,000)
Idaho	California-6	Iowa	South Carolina ($50,000)	Arizona Illinois-7		Connecticut District of Columbia-11	Florida-1
Ohio	District of Columbia-11	Louisiana-8	Washington ($35,000)	Michigan		Georgia	Maine ($125,00)
Utah	Illinois-7 ($5,000)	Mississippi	New Hampshire ($35,000)	Montana Oklahoma		Kansas	North Carolina ($300,000)
West Virginia	Massachusetts ($5,000) Nebraska-5	Missouri	Oregon-9	Rhode Island		Maryland	Virginia $250,000 for DOT Projects
	Wisconsin ($10,000)	New Mexico		South Dakota		Nebraska-5	
	Wyoming ($7,500)	Texas (payment)-12				Nevada New Jersey-2 New York-3	
						North Dakota	
						Oregon-9 Pennsylvania-10	
						Tennessee	
						Texas (performance)	
						Vermont	
						Virginia-14	

Notes

1. Payment and performance bonds may be waived for contracts under $200,000 for counties, cities, political subdivisions and other public entities. The state Department of Management Services may delegate the authority to any state agency to waive bonds for work in excess of $100,000 but less than $200,000. The threshold for DOT projects is $250,000.
2. Bonds may be waived in certain situations if contracts are under $100,000 (public entities other than state agencies) or $200,000 (state agencies).
3. Bonds may be waived by the head of the state agency or commission if the contracts exceed $100,000 or if it exceeds $200,000 for a contract not subject to state requirements for multiple award requirements. (Wicks Act)

Certain public authorities in New York that construct medical buildings have individual payment bond thresholds. For the Westchester County Health Care Corporation and the Nassau County Health Care Corporation, the threshold is $1.5 million, not including the costs of medical equipment and devices. The

threshold for the Clifton-Fine Health Care Corporation and for the Erie County Health Care Corporation is $500,000, not including the costs of medical equipment and devices.

4. In contracts under $35,000, the state may retain 50% of the contract amount in lieu of bonds.
5. $100,000 is the performance bond threshold for the construction, repair and improvement of buildings. The payment bond threshold, which is broadly applicable to all public projects, is $15,000 for the state and $10,000 for all other public entities.
6. In California, the threshold for a performance bond is $100,000. The payment bond threshold is $25,000.
7. In Illinois, the bond threshold is $50,000 for state agencies, but $5,000 for all other public entities.
8. The threshold is $100,000 for the New Orleans Swage and Water Board
9. Oregon threshold is $100,000 but $50,000 for DOT projects.
10. In Pennsylvania construction projects between $25,000 and $100,000, performance security is required in an amount of 50% of the contract price.
11. In the District of Columbia, bonds are not required in projects under $25,000 and may be waived in projects under $100,000.
12. For municipalities and any joint board created under the Transportation Code in Texas, the payment bond threshold is $50,000. The payment bond threshold is $25,000 for all other governmental entities.
13. For city housing and the city redevelopment authorities the threshold for bonds in Minnesota is $100,000.
14. For Virginia public universities and colleges, as well as Virginia Commonwealth University, the threshold is $1 million for payment and performance bonds for university construction projects.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1035

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

H1035-ARC-51 [v.1]

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

Date 7/7 ,2010

Senator Jenkins

moves to amend the bill on page 1, line 4, by rewriting the line to read:

"STATE DEPARTMENTS, STATE AGENCIES, AND THE UNIVERSITY OF NORTH CAROLINA THAT EXCEED FIVE HUNDRED";

and on page 1, line13, by rewriting the line to read:

" that, for State departments, State agencies, and The University of North Carolina and its constituent institutions, a performance and".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/7/2010

S. B. No. 1035 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Jenkins

1 moves to amend the bill on page 1, line 32
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "July 1, 2009,"
4 and substituting "October 1, 2010,".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1035 DATE 7-7-10

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) ~~Brockman~~ McKissick

1 moves to amend the bill on page 1, line 31-32
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following new section between the
4 lines:
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6 "Section 1.1. The Department of Administration, State
7 Building Commission, is directed to simplify the process
8 of prequalification for publicly funded construction
9 projects and to report to the Joint Legislative Commission
10 on Governmental Operations on the steps it is taking
11 to implement this objective by December 31, 2010."!
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)